Supreme Court, U. S.
FILED
JAN 9 1976
MICHAEL RODAK, JR., CLERK

JOINT APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-455

RALPH NADER,

Petitioner,

v.

ALLEGHENY AIRLINES, INC.,

Respondent.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 22, 1975
CERTIORARI GRANTED NOVEMBER 11, 1975

INDEX TO JOINT APPENDIX

Note: The relevant orders and opinions of the United States District Court for the District of Columbia in Civil Action No. 1346-72 and the United States Court of Appeals for the District of Columbia Circuit in No. 73-2243 are set forth in the appendices to the Petition for Certiorari and are not reprinted here.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RALPH NADER and
CONNECTICUT CITIZEN ACTION
GROUP,

Plaintiffs.

v.

ALLEGHENY AIRLINES, INC.,

Defendant.

Civil Action No. 1346-72

Complaint For Compensatory and Punitive Damages

Plaintiffs allege as follows:

1. This action arises under the laws of the United States regulating interstate and foreign air commerce, U.S.C. Title 49, Sections 1301 et seq., and particularly U.S.C. Title 49, Section 1374. This Court has jurisdiction under U.S.C. Title 28, Section 1337 and U.S.C. Title 28, Section 1332. The amount in controversy exceeds the sum of $10,000, exclusive of interest and costs.

2. Plaintiff Ralph Nader is a citizen of the United States and resides in the District of Columbia.

3. Plaintiff Connecticut Citizen Action Group (hereinafter referred to as CCAG) is a non-profit corporation, organized and existing under the laws of the District of Columbia and having its principal place of business at 57 Farmington Avenue, Hartford, Connecticut. Plaintiff CCAG is a public interest advocate for environmental, consumer and human rights issues arising throughout the State of Connecticut, which has been supported and sponsored by Plaintiff Nader since its inception.

4. Defendant Allegheny Airlines, Inc., is a corporation, having its principal place of business at National Air-

port, Washington, D.C., and at all times relevant herein transacted business and maintained offices in the District of Columbia, at 16th and K Streets, N.W., at Washington National Airport, and at other locations within the said District.

5. Defendant is an air carrier engaged in interstate commerce pursuant to a certificate of public convenience and necessity issued by the Civil Aeronautics Board and is regulated by the laws of the United States relating to such interstate commerce and by the rules, orders and regulations promulgated by the Board in accordance with the Federal Aviation Act of 1958.

6. Prior to April 28, 1972, Defendant advertised publicized and published tariffs stating that it transported passengers on a reservation basis by jet aircraft on scheduled flights between Washington, D.C. and Hartford, Connecticut.

7. Defendant knew or should have known that passengers and others alike rely heavily upon such representations and upon the confirmed reservations and tickets which are sold by Defendant for transportation on particular flights.

8. Several days prior to April 20, 1972 Plaintiff Nader's representative contacted Defendant and requested a reservation for Plaintiff Nader for one seat on Allegheny flight 864 from Washington National Airport to Hartford, Connecticut, on the morning of Friday, April 28, 1972.

9. Defendant's agent represented to Plaintiff Nader's representative that Defendant had made a reservation which would assure him passage from Washington on Allegheny flight 864 scheduled to depart on April 28, 1972, provided he purchased his ticket at least 30 minutes prior to flight time.

10. Plaintiff Nader's representative communicated to Plaintiff CCAG the fact that Plaintiff Nader had a reservation on flight 864 on April 28, 1972 and would be arriving at Bradley Field in Hartford, Connecticut on that flight.

11. Early on the morning of April 28, 1972 Defendant's agent, Ober Steamship and Tour Agency, issued a ticket to Plaintiff Nader for Allegheny flight 864 to depart Washington National Airport at 10:15 a.m. on April 28, 1972.

12. At the time the ticket was issued Defendant's agent marked the symbol "OK" in the status column of the ticket thereby confirming the previously made reservation in writing.

13. The Defendant intended by its representations aforesaid to induce the Plaintiffs to rely upon its said representations so that Plaintiff Nader's travel arrangements would not be made with any other competitor of Defendant.

14. When Plaintiff Nader arrived at the gate at National Airport where flight 864 was boarding on April 28, 1972 several people, some of whom had tickets and had not yet been boarded, were also present at the gate.

15. Plaintiff Nader presented his ticket to Defendant's gate agent and was then informed by this agent that the flight had been oversold and that all seats had been taken.

16. At this point Plaintiff Nader explained to Defendant's agents at the gate that he was due to speak to a fund-raising rally organized by and for Plaintiff CCAG, which was to occur at noon that day, and that if he didn't appear on schedule, the rally would be ruined.

17. The purpose of the rally was to organize citizen opposition to utilities rate increases, raise funds for CCAG's public interest work and to give interested citizens the opportunity to hear Plaintiff Nader speak on consumer issues. Plaintiff Nader was to be introduced at the rally by the Mayor of Hartford, Connecticut. The rally and Plaintiff Nader's appearance were heavily advertised both on the radio and by leaflet distribution for several

days prior to April 28, 1972. Plaintiff CCAG anticipated a crowd well in excess of 2,000 persons and planned to raise substantial funds through the sale of bumper stickers and other similar items.

18. In making such plans and arrangements, Plaintiff CCAG relied on the expectation that Plaintiff Nader would be accommodated on flight 864 for which he had a confirmed reservation.

19. After being informed that the flight had been oversold and he would not be accommodated, Plaintiff Nader then asked Defendant's agent, in view of his urgent circumstances, to ascertain whether standby passengers had been improperly boarded in lieu of persons holding confirmed reservations, and to recheck whether Plaintiff Nader could be accommodated.

20. Defendant's agent refused to board Plaintiff on flight 864.

21. Other persons holding confirmed reservations were also denied boarding on flight 864.

22. Defendant's refusal to accommodate Plaintiff Nader on flight 864 was in breach of its contract with Plaintiff Nader.

23. Defendant's refusal to accommodate Plaintiff Nader was in violation of its published tariff.

24. Plaintiff Nader then requested Defendant's agents to explain his situation to the passengers already boarded on flight 864 and ask if any such passengers would volunteer to take a later flight in order to allow Plaintiff Nader to get to Harford in time for the rally.

25. Defendant's agents refused Plaintiff Nader's request described in paragraph 24.

26. No other certificated airline service was available at that time to transport Plaintiff Nader to Hartford in time for the rally.

27. Defendant's flight 864 departed Washington National Airport approximately on schedule at about 10:15 a.m. on April 28, 1972, and said flight arrived at Hartford approximately on schedule that morning.

28. Defendant in fact sold more seats for flight 864 on April 28, 1972 from Washington to Hartford than were available on the aircraft.

29. Plaintiff Nader was forced to take next available flight to Boston, Massachusetts in order to arrive in time for an engagement that afternoon in Storrs, Connecticut, thereby incurring additional charges for airfare in the amount of $3.00, plus other costs and expenses for Plaintiffs.

30. As a direct and proximate result of Defendant's conduct, the Director of Plaintiff CCAG had to and in fact did appear before an expectant crowd of hundreds of persons and inform the audience that Plaintiff Nader had missed his flight and would not appear. Consequently, the purpose of the meeting was frustrated, the large anticipated turn-out failed to materialize, no funds were raised, the publicity work of a large number of CCAG supporters and volunteers went for naught and the reputation, esteem, and fund-raising ability of Plaintiff CCAG was seriously damaged and impaired.

31. Defendant knew that it could not assure passage to Plaintiff Nader on flight 864 on April 28, 1972 or other flights on Defendant's system because such flights had been and were being consistently over-reserved and oversold.

32. Defendant knew that ticket holders with confirmed reservations were regularly being denied space on such oversold flights and that any prospective passenger on any such flight might be denied accommodation on such flight despite holding a confirmed reservation.

33. Defendant failed to inform Plaintiff Nader, at any time prior to his arrival at Washington National Airport to

take flight 864, of the possibility that his confirmed reservation might not be or would not be honored because of Defendant's practice of overbooking such flights.

34. Defendant arbitrarily and capriciously denied Plaintiff Nader passage and at the same time afforded passage on said flight to one or more persons holding tickets issued subsequent to this ticket or to persons otherwise not entitled to occupy the space reserved and confirmed for Plaintiff Nader by Defendant's agent, thereby subjecting Plaintiff Nader to unjust discrimination, or undue or unreasonable prejudice or disadvantage.

35. Defendant regularly overbooks, on a confirmed reservation basis, various of its flights including flight 864 with the result that said flights are frequently oversold, and regularly subjects ticket holders with confirmed reservations on said flights to unjust discrimination or undue or unreasonable prejudice or disadvantage by arbitrarily and capriciously refusing passage to ticket holders with confirmed reservations without regard to their contractual rights, and by arbitrarily and capriciously allowing passage to other persons not entitled to the space which Defendant's had previously contractually reserved.

36. Defendant's actions as aforesaid were knowing, and were undertaken in such conscious and deliberate disregard of the interests of its prospective passengers and others that such actions were willful, wanton and accomplished in willful disregard of the provisions of Defendant's own tariffs and the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.).

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows:

1. Plaintiff Nader demands compensatory damages in the amount of $10.00 and punitive damages in the amount of $50,000.00 together with interest, costs of this suit, and such other or further relief as the Court may deem proper.

2. Plaintiff CCAG demands compensatory damages in the sum of $100,000.00 and punitive damages in the sum of $100,000.00 together with interest, costs of this suit, and such other or further relief as the Court may deem proper.

PLAINTIFFS DEMAND TRIAL BY JURY AS TO ALL ISSUES.

[Names and addresses of
counsel omitted in printing]

UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA
[Title omitted in printing]

Answer

First Defense

The Complaint fails to state a claim upon which relief can be granted against the Defendant Allegheny Airlines, Inc.

Second Defense

The Complaint fails to state a claim upon which punitive damages can be granted against Defendant Allegheny Airlines, Inc.

Third Defense

This action does not appropriately belong within the jurisdiction of this Court in that it challenges the legality and propriety of Defendant Allegheny's reservation and denied boarding practices, which considerations are by law assigned to the Civil Aeronautics Board and not to the courts.

Fourth Defense

This action is barred for the failure of the Plaintiffs to comply with Rule 40(B), Tariff C.A.B. 142, Local and Joint Passenger Rules Tariff No. PR-6 in that they failed to present to Defendant Allegheny a written notice of claim within 45 days of the alleged occurrence of the events giving rise to this claim.

Fifth Defense

1. Defendant Allegheny admits the allegations of paragraphs 5, 6, 8, 11, 12, 15, 20, 21, 24, 25, 27, and 28 of the Complaint.

2. Defendant Allegheny admits the allegations of paragraph 4 of the Complaint except that National Airport is in Washington, D.C. which Defendant denies.

3. Defendant Allegheny denies the allegations of paragraphs 7, 9, 13, 18, 22, 23, 29, 30, 31, 32, 34, and 36 of the Complaint.

4. Defendant Allegheny is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 2, 3, 10, and 17 of the Complaint.

5. Defendant Allegheny admits the allegations of paragraph 16 of the Complaint except that it is denied that Plaintiff Nader told the Defendant's agent that the rally would be ruined if he failed to appear.

6. Defendant Allegheny admits the allegations of paragraph 19 of the Complaint and avers that Defendant's agent did take the actions requested by Plaintiff Nader as described in said paragraph 19 of the Complaint.

7. In answer to paragraph 14 of the Complaint Defendant Allegheny states that the time Plaintiff Nader arrived at the gate from which Flight 864 was departing the boarding of Flight 864 had been completed. Two people were at the gate at that time with tickets, but they had not been boarded.

8. In answer in paragraph 26 of the Complaint Defendant Allegheny alleges that Plaintiff Nader was offered transportation on Allegheny Commuter Flight 145 from Washington to Philadelphia connecting with Allegheny Flight 906 to Hartford, Connecticut, scheduled to arrive in Hartford at 12:10 p.m., 55 minutes after the arrival of Plaintiff Nader's ticketed flight.

9. In answer to paragraph 33 of the Complaint Defendant states that Plaintiff Nader was already aware of the possibility that a confirmed reservation would not be honored because of the reservation practices of airlines, and Defendant avers that Plaintiff Nader was aware that the possibility of such denied boarding increases when the passenger arrives at the boarding gate after the conclusion of the boarding of the airplane and at the time that the flight was scheduled to take off, as Plaintiff Nader did in this instance.

10. In answer to paragraph 35 of the Complaint Defendant Allegheny states that Defendant, in an effort to minimize the effect of the no-show passenger problem upon Defendant and the public, accepts a limited number of reservations in excess of flight capacity based upon statistical studies of the percentage of likely cancellations and no-shows on each flight. The remainder of paragraph 35 is denied.

11. The allegations of injuries and damages in the Complaint are denied, as are all other allegations of the Complaint not specifically answered above.

[Names and addresses of counsel omitted in printing]

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

1972

Jul 7—Complaint, appearance Jury Demand—filed.

Jul 7—Summons, copies (1) and copies (1) of Complaint issued serv. 7-13.

Jul 31—Stipulation enlarging time for defendant Allegheny Airlines to answer complaint to 8-16-72.

Aug 8—First set of interrogatories of plaintiffs to defendant; c/m 8-8.

Aug 10—Change of address of Don W. Crockett.

Aug 16—Motion of defendant for summary judgment; exhibit A, B; statement; P & A; c/m 8-16. Appearance of William A. Bradford Jr.

Aug 16—Motion of defendant for extension of time to answer interrogatories; P & A; c/m 8-16.

Aug 22—Request of plaintiffs for production of documents; c/m 8-21.

Aug 25—Memorandum of P & A by plaintiff in opposition to motion for summary judgment; table of citations; affidavit, exhibit A, B, C, D; c/m 8-24.

Aug 25—Request of plaintiffs for oral argument on defendants motion for summary judgment.

Aug 25—Memorandum of P & A by plaintiff in opposition to defendants motion to delay answering interrogatories; c/m 8-24.

Aug 25—Motion of defendant for extension of time to respond or object to plaintiffs request for production of documents; P & A; c/m 8-25. M. C.

Aug 30—Memorandum of plaintiffs in opposition to delay production of documents; c/m 8-29.

Sep 1—Supplemental memorandum of defendant in support of its motion to extend time to respond to interrogatories and to document requests; supplementary memorandum of defendant in support of motion for summary judgment; affidavit; attachment A; c/m 9-1.

Sep 20—Response of plaintiffs to defendants supplementary memorandum; c/m 9-18.

Sep 29—Order denying defendants motion for summary judgment. (N) Richey J.

Sep 29—Order extending the time in which defendant Allegheny Airlines, Inc., may respond or object to the plaintiffs request for Production of Documents 20 days after the Court has ruled on the defendants motion for Summary Judgment. (N) Richey J.

Oct 6—Motion of deft to amend order of 9-29-72; P&A; Exhibit; c/s 10-6-72 M.C.

Oct 12—Motion of defendant for amended order heard & denied. (Order to be presented) (Reporter: T. Dourian) Richey J.

Oct 12—Opposition of defendant to motion for an amended order; c/s. Richey J.

Oct 12—Order denying motion of defendant for an amended order. (N) Richey J.

Oct 12—Notice of defendant to take deposition of Ralph Nader; c/m 10-12.

Oct 20—Response of defendant to plaintiffs request for production of documents; c/m 10-20.

Oct 20—Answer of defendant to complaint; c/m 10-20. Appearance of William A. Bradford, Jr.; Hogan & Hartson.

Oct 20—Answer of defendant and objections to plaintiffs first set of interrogatories; exhibit 1; c/m 10-20.

Nov 21—Notice of defendant to take deposition of Toby Moffett; c/m 11-21.

Dec 11—Motion of plaintiffs to compel answers to interrogatories and production of documents; P & A; exhibits A & B; c/m 12-8.

Dec 15—Memorandum of P & A by defendant in opposition to plaintiffs motion to compel; c/m 12-15.

Dec 29—Reply of pltfs to deft's memorandum of P & A; c/m 12-27.

1973

Jan 18—Recommendation allowing in part and denying in part Pltf's motion to compel answers to interrogatories and for production of documents; Pretrial Examiner.

Jan 25—Opposition of Pltf's. to recommendation of Pretrial Examiner; Appendix A: c/m 1-25.

Jan 29—Objection of deft. to recommendation of the Pretrial Examiner. c/m 1/29/73.

Feb 7—Reply of pltfs to deft's objections to recommendations of Pretrial Examiner. c/m 2/6.

Feb 16—Order affirming the recommendation of the Pretrial Examiner entered on 1/18/73. (N) Richey, J.

Apr 27—Deposition of Ralph Nader for the deft.

May 9—Supplemental response of deft to request for production of documents; attachments. c/s 5-9.

May 9—Supplemental response of deft to pltf's interrogatories. c/s 5-9.

May 10—Calendar Call: Withdrawal of Jury demand; Trial set 9-7-73, 9:30 a.m. (Rep: T. Dourian) Richey, J.

May 10—Order setting trial for 9-7-73, 9:30 a.m.; setting out the courts instructions to counsel. (N) Richey, J.

May 14—Affidavit of verification by David B. Armstrong; c/m 5/14/73.

Jun 8—Deposition of Anthony John Moffett, Jr. for deft.

July 13—Request of pltff. for production of documents; set II; c/m 7/13/73.

July 31—Deposition of John McDonald for the pltffs.

Aug 9—Motion of deft. for protective order; P&A. c/m 8-9.

Aug 14—Opposition of pltfs. to motion for protective order. c/s 8-13.

Aug 15—Response of defts. to request for production of documents. c/m 8-15.

Aug 16—Order denying defts. motion for a protective order; directing Leslie O. Barnes to appear 8-20-73 at 10:30 a.m. for deposition. (N) Richey, J.

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Aug 30—Trial brief of deft. c/m 8-30.

Aug 30—Objections of deft. to pltfs proposed documentary exhibits. c/m 8-29.

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Aug 30—Trial brief of pltffs.

Aug 30—List of exhibits of pltffs.

Sept 4—Trial by Court begun; respited until 2:00 p.m. 9-10-73. (Rep: T. Dourian) Richey, J.

Sept 4—List of deft. exhibits.

Sept 10—Trial by Court resumed; concluded; taken under advisement. (Rep: T. Dourian) Richey, J.

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Sept 17—Proposed Findings of Fact & Conclusions of Law by deft. c/m 9-17.

Sept 17—Post-Trial memorandum by pltfs. table of cases, appendix A, B, C & D. c/m 9-17.

Oct 18—Findings of Fact, Conclusions of Law, and Order entering Judgment against the deft. and directing that deft. pay to pltf. Nader $10.00 in compensatory damages and $25,000 in punitive damages and pay to pltf. Conn. Citizens Action Group $51.00 in nominal damages and $25,000 in punitive damages and pltf. shall have judgment against deft. for costs. (N) Richey, J.

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Nov 16—Notice of appeal by deft. from order of 10-18-73. Copies mailed to Reuben B. Robertson, III and Don Crockett. Deposit $5.00 by Roberson.

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UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

[Title omitted in printing]

12-28-73	Certified Original Record (2 volumes of transcript and one envelope containing Exhibits (n)
1-25-74	25-Briefs for amicus curiae (The Air Transport Association of America)
1-28-74	25-Appellant's Brief (m-28)
1-28-74	10-Appellant's Appendix (m-28)
3- 4-74	25-Appellees' brief (p-4)
3-18-74	25-Appellant's reply brief (m-18)
6-28-74	4-CAB's motion for leave to file brief as amicus curiae out of time (m-28)
7- 5-74	4-Appellees' memorandum in opposition to motion of Civil Aeronautics Board for leave to file untimely amicus curiae brief (m-3)
7-25-74	Per Curiam order that the Clerk is directed to file the brief of the C.A.B. as amicus curiae; the time for filing appellees' reply to the amicus curiae brief, if any, is extended to August 24, 1974; Fahy, Sr. CJ and McGowan, CJ
7-25-74	25-Brief for C.A.B. as amicus curiae (m-28)
8- 5-74	4-Appellees' motion to extend the time to file a reply to Amicus Curiae Brief to September 16th (Ok RB) (m-2)
8-14-74	Per Curiam order by the Clerk for the Court granting appellees' motion to extend time to reply to the brief amicus curiae of the CAB and the time for filing appellees' brief is extended to September 16, 1974
9-17-74	15-Appellees' reply to Brief Amicus Curiae of the CAB (m-16)
11-29-74	Clerk's order sua sponte, placing this case on the summary calendar

12- 6-74	4-Appellees' motion for full oral argument (p-6)
12- 9-74	Clerk's order denying appellees' motion for full oral argument
12-10-74	Argued before McGowan and Tamm, CJ; The Court announced that Sr. CJ Fahy is a member of this panel of the Court but is unable to be present; the case will be submitted to him on the briefs and tape recording of oral argument
5- 2-75	Opinion for the Court filed by Circuit Judge Tamm.
5- 2-75	Opinion filed by Senior Circuit Judge Fahy, concurring in part and dissenting in part
5- 2-75	Judgment reversing and remanding case to the District Court. (n)
5-16-75	11-Appellees' petition for rehearing and/or suggestion for rehearing en banc (m-16)
6-23-75	Per Curiam order denying appellees' petition for rehearing; Fahy, Sr. CJ; McGowan and Tamm, CJ; Sr. Circuit Judge Fahy would grant the petition for rehearing as to that part of the case as to which he has filed a dissenting opinion
6-23-75	Per Curiam order by the Clerk for the Court, en banc that appellees' suggestion for rehearing en banc is denied
7- 1-75	Copy of opinion and certified copy of judgment and bill of costs in the amount of $2,726.30 issued to District Court.

Excerpts From Transcript of Trial

UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA

[Title omitted in printing]

Washington, D.C.

September 4, 1973

The above-entitled matter came on for trial before the Honorable Charles R. Richey, United States District Judge, at ten o'clock a.m.

APPEARANCES

For the Plaintiffs:

REUBEN B. ROBERTSON, ESQ.

For the Defendant:

FRANK ROBERSON, ESQ., and

WILLIAM A. BRADFORD, JR., ESQ.

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[2] The Clerk: Civil Action 1346-72, Ralph Nader and others versus Allegheny Airlines.

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[3] Mr. Robertson: Yes, Your Honor. There is no disagreement with the defendant's exhibits.

The Court: All right. All defendant's exhibits may be admitted?

Mr. Robertson: So far as I am concerned, that is fine.

• • • • • • • • • •

[4] The Court: In other words, as I understand it, Mr. Roberson, on behalf of the defendant, would admit and offer no objection to 1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12?

Mr. Roberson: That is correct, sir.

The Court: All right. Let us go back to 2. You had better argue that, because I am not sure I understand it.

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[8] The Court: Let me say this, Mr. Roberson:

As you obviously know, the court is sitting without a jury, and I believe the court can give it the appropriate weight. It may have no bearing on any issue in this case,

and I am not ruling, by letting it in, that it does at this point. I am going to receive it for what it is worth at this time.

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[9] (Plaintiffs' Exhibits 1 through 13, inclusive, received in evidence, respectively.)

The Court: Now, let us go on to Exhibit 14.

Now, they admit the authenticity of letters of complaint, but Mr. Roberson says that these letters are objected to on the grounds they have no relevancy to the plaintiffs' experience on April 28th.

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[12] The Court: All right. I will admit those, but these three letters that came afterwards, I will deny them.

(Plaintiffs' Exhibit No. 14 received in evidence, as above set forth.)

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[13] The Court: All right.

How about 23?

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The Court: I do not think it is binding on the court. I can take judicial notice that such an order exists and receive it for what it is worth. But I do not, frankly, at this juncture, see how it is going to help the court or be dispositive of the issues in the case.

Mr. Robertson: No, Your Honor, and, indeed——

• • • • • • • • • •

The Court: I will receive it for what it is worth, [14] and at this point you have to convince me that it is worth a whole lot, because I do not see where it is worth very much.

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(Plaintiffs' Exhibit No. 23 received in evidence.)

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Ralph Nader

was called as a witness, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Robertson:

Q. Mr. Nader, would you state your full name for the record, please? A. Ralph Nader.

Q. Are you a resident of Washington? A. Yes.

Q. What is your profession? A. Lawyer.

• • • • • • • • • •

[15] Q. Mr. Nader, do you remember when you purchased your ticket for Flight 864 on April 28th? A. Very early in the morning.

• • • • • • • • • •

Q. Had you made a reservation for the flight in advance? A. Yes, a reservation was made in advance.

Q. Do you remember how far in advance, approximately, sir? A. Several days, about three days in advance.

Q. What was the purpose of this trip to Hartford? A. It was to attend a fund-raising rally in downtown [16] Hartford, as well as to attend a number of other gatherings throughout the State of Connecticut.

Q. And when you say "attend," did you have any particular function to perform at those rallies? A. Yes, I was to speak at the rallies.

Q. How far in advance was this trip planned? A. At least three weeks. The day was planned for a number of gatherings around the state on behalf of the Connecticut Citizen Action Group.

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Q. What is the Connecticut Citizen Action Group? A. It is a citizens' group that dedicates its effort in a non-profit manner to consumer, environmental, legislative, governmental rights.

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[17] Q. What time did you get to the airport on April 28th? A. About four or five minutes after 10:00.

Q. Where were you at that time? A. At the Allegheny ticket counter.

Q. That is upstairs, as you got out of the cab? A. Yes, it is on the ground floor of the airport.

Q. How do you remember that time? How did you know it at that time?

• • • • • • • • • •

A. When I left downtown Washington at about 20 of 10:00, I noticed that it was taking longer than it usually takes to get to the airport. Since the plane was leaving at [18] 10:15, I looked at my watch when I arrived at the Allegheny counter, pursuant to looking at the board to see what gate number the plane was leaving from.

Q. What did you do after you got there? A. I went right to the gate.

Q. And how long did it take you to get there? A. About three minutes.

Q. What time did you arrive at the gate? A. About 10 after 10:00. My watch is usually a minute or a minute and a half fast, but it was 10 after 10:00, I would say.

Q. What time was the flight scheduled to leave? A. At 10:15.

Q. Was the plane still there when you arrived? A. Oh, yes.

Q. What happened when you arrived at the gate? A. There were people milling around in front of the ticket lift desk, so to speak, and the person in front of me was a person I had known, John Koskinen, who was an aid to Senator Ribicoff.

• • • • • • • • • •

Q. What happened when you presented the ticket to the [19] agent? A. When I presented the ticket to the agent, the agent indicated that there was no more room on the plane.

Q. Do you remember exactly what the agent said? A. He said, in so many words, there is no more room. The plane is full.

Q. Did you tell him you had a reservation? A. I did.

Q. What did you tell the agent about the nature of your trip? A. I told him that I had to make an important speech in downtown Hartford, and it was very important that I get on the plane.

I asked him if he would check to see if there were any stand-by's on the plane, because it has been my experience that stand-by's are given secondary priority.

Q. Did he tell you whether there were any stand-by's or not? A. He indicated simply that the plane was full. He had constantly repeated that phrase, and that he could not do anything about it.

Q. Did you ask him to do anything else to help get you on board? A. Yes, I asked him if he would send his representative or go to the plane—they were milling back and forth at the [20] time—and ask if anybody on the plane would desire to volunteer to take a later plane because of the urgency of the trip.

• • • • • • • • • •

By Mr. Robertson:

Q. When you asked the agent to see whether there were any volunteers on board who might take a later flight, sir, so [21] that you could make your engagement, what did he say to you then? A. He said he was sorry, but he couldn't do anything about that.

Q. Did he refuse to seek any volunteers? A. Yes, by virtue of his statement.

Q. And at this time was the plane still at the gate? A. Yes.

Q. What did you do then? A. Then I went to the telephone—no, prior to that I asked him what else could be done, in effect, as other people were asking him, in the same situation. He said he would possibly see; that there might be another connection that could be made.

Q. What was the other connection that he told you about? A. He said there might be another connection via Philadelphia to Hartford, but that it was a close scheduling problem.

Q. Did he say how close it was? A. I don't recollect exactly, other than it occurred to me that sometime in that two- or three-minute span of frantic exchanges, and so forth, there was indicated a ten-minute connection time, if the plane from Washington landed as scheduled in Philadelphia.

Q. Did he say whether or not he could assure that the connection in Philadelphia would definitely be made? A. No, he did not say he could assure it at all.

Q. Did he say he could not assure it? [22] A. He said he could not assure it, in so many words.

Q. Do you recall what time this proposed connecting flight was supposed to arrive in Hartford if it did make the connection? A. At 12:15.

Q. That is the best of your recollection? A. Yes.

Q. Would that be in time for the rally? A. No, it would not.

Q. What time was the rally scheduled for? A. It was my understanding that the rally was scheduled for 12:00 noon. A 12:15 arrival, with time to get a cab at Bradley Field and time to get into Hartford, would have brought me at the designated area no earlier than 10 or 5 of 1:00.

Mr. Roberson: Your Honor, I object to that and move it go out. It is not responsive.

The Court: Overruled.

Mr. Roberson: May I say that the actual time of the rally—he was asked what was the time of the rally. Well, the actual time of the rally was 12:15, not what he thought it was. It was not noon.

The Court: Well, I think he said 12:15, if I understood him correctly.

Mr. Roberson: No, he said he thought it was noon, Your Honor.

[23] The Court: Now, what did he say, Mr. Reporter? Did he say 12:15 or did he say noon?

(A portion of the record was read back by the reporter, as follows: "Question: What time was the rally scheduled for? Answer: It was my understanding that the rally was scheduled for 12:00 noon.")

The Court: All right.

By Mr. Robertson:

Q. Your recollection and your understanding upon which you base your testimony was that the rally was scheduled for 12:00? A. Yes, sir.

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Q. Did you know exactly what time the rally was scheduled for? A. My understanding is that it was a noon rally.

Q. Did you know exactly what time the rally was scheduled for? A. Yes.

[24] Q. Did you know exactly what time you were expected to arrive? A. Yes. At that point at the Allegheny desk, ticket desk, it was my clear understanding that it was a noon rally.

Q. Fine. What would have happened if the Philadelphia connection had been missed? A. If the Philadelphia connection had been missed, I would have, in effect, been stranded in Philadelphia and would not have been able to make other engagements in the State of Connecticut that afternoon.

Q. Did you notify anyone about being bumped off the flight? A. Yes, I called Mr. Moffett via Mr. Jacobs.

Q. Who is Mr. Moffett? A. Mr. Moffett is the director of the Connecticut Citizen Action Group in Hartford.

Q. And who is Mr. Jacobs? A. My associate.

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Q. What was the nature of that conversation? [25] A. To relate to Mr. Moffett that I could not obtain a seat on the Allegheny flight; that the suggested connection via

Philadelphia was a very tight one; and it had two risks inherent in it:

One, I might not be able to get out of Philadelphia if the plane arrived late in Philadelphia for the connection and, second, and most important, even if everything went as scheduled and the plane arrived at 12:15, I would not have been able to get into downtown Hartford, which is about 20 or 25 miles away, until just before 1:00 o'clock.

Q. Do you know how many calls were made to Mr. Moffett? A. I think two calls were made?

Q. Two at that time? A. Yes.

Q. Were there any later calls made to Mr. Moffett? A. Yes, there was a second call, again through Mr. Jacobs, indicating that the best plan would be to take an American Airlines flight to Boston and have somebody pick me up at Logan Airport.

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The Witness: And drive me to Storrs in Connecticut, [26] which was my next engagement.

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Q. And approximately how much was spent on your long-distance telephone calls? A. About $7.

Q. What flight did you take, then? A. I did take the American Airlines flight. It left sometime between 11:00 and 12:00. I don't know the exact time to Boston from Washington.

Q. Why did you not take the air taxi connection? A. For two reasons:

One, there was no assurance that it would get to the Allegheny flight in time that was leaving Philadelphia. I believe there is about a 10-minute span there.

And, secondly, that even if it did, it would have arrived too late for me to get a cab to go all the way down to downtown Hartford in time for the lunchtime rally.

Q. What happened when you arrived at Boston? A. A representative of the Connecticut Citizen Action Group

picked me up in the car and drove me to Storrs in Connecticut.

Q. Were you in time for your engagement there? A. I was late.

Q. Do you remember how late you were? A. About 25 minutes or so.

[27] Q. Were you informed by Allegheny prior to the flight at any time that it overbooked its flights? A. No.

Q. Were you informed by Allegheny or warned in any way that there was a risk of being denied boarding on its flights? A. No.

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Q. Were you warned in advance or told in any manner that Flight 864, in fact, was overbooked for that day? A. No.

Q. Were you aware of this? A. No, I was not.

Q. If you had known in advance of the risk that you might not get on the flight, what action would you have taken? A. I would have taken an earlier flight.

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[28] Q. What was your anticipation as to how you were going to get to Hartford on the 28th of April? A. Well, since I had a confirmed reservation on that Allegheny flight, I fully anticipated there would be a seat available for me on the aircraft when I arrived at the gate.

Q. Did you rely on this, in fact, in making your plans and your commitments? A. I certainly did.

Q. Were you ever bumped by Allegheny before? A. I was not.

Q. Were you ever bumped on any other airline flights? A. Yes.

Q. How many times have you been bumped? A. Twice before that, as I can remember.

Q. On what occasions did this happen? A. About six months previously, an Eastern Airlines flight bumped me, and five other people, on a flight to Miami. Just a few

days before the Allegheny flight, an American Airlines flight bumped me.

Q. Did this not make you aware that Allegheny does overbook its flights, and your reservation was subject to this kind of risk? A. No, it did not.

Q. Well, why not? A. For two reasons:

[29] One, the two incidents did not relate to Allegheny. They were not relevant to Allegheny's behavior.

And, second, against all the flights that I had taken in the past, these were the only two times, one of which might have been understandable because of the fact of an airline strike on a competing route to Miami.

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The Court: There was not any strike in connection with the American Airlines flight?

The Witness: And there was not any strike in connection with the American.

The Court: Did you have a confirmed reservation in each of those instances?

The Witness: Yes, I did.

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By Mr. Robertson:

Q. In each of those cases were you put on another flight that got you in time to your destination or shortly after? A. Yes, there were some delays, however, obviously.

Q. So in either of those cases, were you given any boarding compensation? A. No. To finish my answer to your last question, against the number of flights that I had taken, two flights in that type of situation certainly were not enough to dismantle [30] my anticipation of reliability.

Q. Well, did you understand from these incidents that there was a pattern of systematic and intentional overbooking throughout the airline industry? A. No, it was always explained as accidental, or what have you, but certainly not as policy.

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Cross-Examination

By Mr. Roberson:

Q. Mr. Nader, do you remember having your deposition taken in this case on November 13, 1972, when you were asked under oath certain questions with respect to this incident? A. I do.

Q. Since that deposition, have you read the deposition that was also taken of Mr. Moffett, the director of your Citizen—Connecticut Citizen Action Group? A. Yes, I have.

Q. Have you learned from reading Mr. Moffett's deposition that his recollection and his testimony was different from your deposition testimony as to when the arrangements were made for you to make a speech in Hartford? A. Yes, I have.

Q. Is that why you changed from saying on your deposition [31] that you had agreed at least three weeks in advance with Mr. Moffett to now saying that it was somewhat less than three weeks? A. It was a refreshing of my recollection. You see, there was an overlap here. The agreement for the day's trip was made at least three weeks in advance, but the agreement for the particular speech was made in less time. Reading that deposition refreshed my recollection on that point.

Q. Well, you knew that I was not asking you about some other speech; that I was asking you about the Hartford speech, was I not? A. Yes.

Q. And you did testify unequivocally that you made that at least three weeks in advance? A. There was a confusion of the overlap, yes.

Q. To respond to my question—— A. Yes.

Q. (Continuing)—you did so testify without any equivocation, didn't you? A. I would have to see my testimony.

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Q. Was this question asked, and did you answer this way at page 13 of your deposition:

"Question: How long in advance had you agreed to be present [32] for this meeting, the speaking engagement?

"Answer: At least three weeks, I would say."

Was that question asked you, and did you answer that way?

The Court: What page?

Mr. Roberson: Page 13, sir.

The Court: All right.

By Mr. Roberson:

Q. Was that question asked you on your deposition, and did you respond in the way that I just read it? A. Yes.

Q. And you testified in your deposition that you made that speaking arrangement directly with Mr. Moffett by telephone, didn't you? A. It was made either—I could not recollect whether it was made directly with his office or through Miss Colmore simply because the general day's activities were discussed with Mr. Moffett. Apparently, the specific speech, itself, was arranged about a week before its date through Miss Colmore's office in New York.

Q. Is this another instance where you are cleaning up your deposition testimony a little bit after reading Mr. Moffett's deposition? A. Just clarifying confusion.

Q. Were you asked this question at page 14 of your deposition, and did you respond this way:

[33] "Question: Is he the one [speaking of Mr. Moffett] that you agreed with to speak?

"Answer: Yes."

A. To speak during the day, yes, sir.

Q. And your answer was just "yes"? A. Yes.

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[36] Q. Now, both of these exhibits, F and G, give the starting time of this rally as 12:15, do they not? A. I will take your word for it.

Q. I would rather you would look at it? A. Fine. Well, this one does not. Yes, it does. Fine. Both of them do.

Q. They both do, don't they? A. Yes.

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[37] Q. But, in any event, your information or your understanding was that it would arrive at Bradley Field, which is the name of the Hartford Airport, at about 12:15, isn't that right, Mr. Nader? A. At about 12:15.

Q. You have later learned from your friend, Mr. Koskinen, who at that time was an aid to Senator Ribicoff, that it did arrive at about that time, isn't that correct? A. That is correct.

Q. You know that they did make the Philadelphia connection, don't you? A. They made an illegal Philadelphia connection.

Q. Did I ask you anything about whether it was a legal [38] or illegal connection? A. In the interests of accuracy——

Q. Did I ask you anything about whether it was illegal or legal, the Philadelphia connection? A. No.

Q. It did make its Philadelphia connection, did it not, sir? A. Yes.

Q. And it got to Hartford at approximately twelve—— A. Yes, that is correct.

Q. Wait until I finish the question. And it got to Philadelphia at approximately 12:15? A. As Mr. Koskinen told me.

Q. And the distance, the airline distance, betweeen Constitution Plaza where this rally was to be held and Bradley Field is—I mean the direct route would be—eleven-and-a-half miles, would it not? A. I don't know the miles. I know the time it takes from experience.

Q. You are a native of Connecticut, are you not? A. Yes.

Q. Have you spent a good deal of time in Hartford? A. Yes.

Q. Almost the entire route, whatever the distance, between Bradley Field and Constitution Plaza, you are on expressways, [39] are you not? A. Well, certainly, except until you get into the city, which is not expressway.

Q. Does not Interstate 95 go within a couple of blocks of Constitution Plaza? A. Yes, as it was recently constructed.

Q. Was it in existence in April of 1972? A. Yes.

Q. So you would have traveled that distance, whatever it is, almost all the way on expressways, wouldn't you? A. Yes, I think so.

Q. Now, had you arrived at 12:10, could you not travel the distance down on these expressways at that time of day in time to have arrived at a rally starting at 12:15 before it broke up? A. No.

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Q. You could not make it in 30 minutes? [40] A. It is close. I takes you about 10 minutes to get a cab, once you step off the airplane and go up the labryinthic corridors to find a cab.

Q. Sometimes it takes you ten minutes; sometimes it takes you less, does it not? A. My experience is ten minutes.

Q. Would it not be possible for you to have one of your associates or the Connecticut Citizen Action Group there on hand at the airport to meet you so you would not have to wander around the airport looking for a taxi? A. That would have taken longer, because they would have had to park the car. They do not allow any loitering at the very narrow gate space.

Q. I did not ask you whether it would taken taken longer. I asked you was it not possible. A. Could you rephrase the question again?

Q. Read the question to the witness, please.

(The last question was read back by the reporter, as requested.)

By Mr. Robertson:

Q. Would you answer that question? A. Yes.

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[41] Q. You were not the only speaker down there at this rally, were you? A. My understanding is that I was.

Q. Didn't you understand that the mayor was going to make a speech and some councilman was going to make a speech, among others, at this rally? A. My understanding is that they were to be just brief introductions.

Q. You knew they were going to say something to whatever audience was assembled, didn't you? A. Yes.

Q. Have you learned, in fact, that the rally didn't break up until 12:45? A. I learned that the remnants of the rally terminated at about 12:45.

Q. In other words, if you could have traveled the distance between the airport and the downtown site of the rally in 30 minutes, Constitution Plaza, you would have gotten there before everybody left, would you not? A. I would have gotten there before everybody left. That is correct.

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[42] Q. As a matter of fact, you were a half hour late over at Storrs, Connecticut. It was supposed to start at 2:00 p.m., and you got there around 2:30, didn't you? A. Around 2:25.

Q. If Mr. Moffett testified 2:30, he is incorrect about that? A. Most people do not, you know, have a bell on their watch. My estimate is 2:25. If his estimate was 2:30, then we have to take each estimate as to its value.

Q. To answer my question, if Mr. Moffett testified that it was about 2:30 that you got there, then he was wrong about that? A. No, about 2:30 could be 2:25.

Q. And the audience was still there when you arrived, were they not, at Storrs, Connecticut? A. The college audience was still there.

Q. Was the difference between those two rallys that you were getting a fee at Storrs, Connecticut; whereas, you were speaking free over in Hartford, or were to have spoken free; was that a difference between those two rallys? A. No, because I was not getting a fee in either place, sir.

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[44] Q. Well, if an announcement had been made to the assemblage that Mr. Nader had been delayed, but would be there before the rally was over, do you not think that that would have had some effect to hold the crowd? A. No, I don't, because most of the audience——

Q. I did not ask you why. I just asked you: do you not think that. A. Okay. No.

Q. You could have taken a flight up to Hartford the night before, which would have made it certain that you would be there both for your rally in Hartford and get over to Storrs in time, could you not? A. If I were not overbooked.

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Q. Your answer is that you could have taken a flight the previous evening which would have gotten you there in plenty of time, isn't that right, sir? A. If I could have obtained a reservation, counsel, and [45] if I were not overbooked.

Q. And there are other airlines than Allegheny that serve Hartford, are there not? A. Yes.

Q. Now, are there also trains and buses that go to Hartford? A. May I correct my answer. You said there are other airlines that serve Hartford.

Q. Yes. A. I know there is one other scheduled airline. I don't know if there are other "airlines".

Q. What is the other one? A. Eastern.

Q. There are also morning flights, earlier morning flights than 10:15, that would have gotten you there in time, in plenty of time for your rally, isn't that so? A. Yes, again subject to those two qualifications.

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Q. What time was this Flight 864 scheduled to have arrived in Hartford? A. Again, I believe it was about an hour after it was [46] scheduled to depart, which would have made it roughly 11:15.

Q. Which would have made you only 45 minutes before the time that you thought your rally was supposed to begin, namely, noon? A. That is correct.

Q. And you say that you could not have gotten at that time of day between the airport and downtown Hartford, Constitution Plaza, in 30 minutes' time? A. I could not have gotten—to answer your question precisely, I could not have gotten there before 30 minutes' time.

Q. So you were cutting it pretty thin, even if everything had gone well for you, were you not? A. There was 15 minutes' leeway. I would not call that thin.

Q. You think, then, that you could have gotten downtown in 30 minutes? A. I think I could have gotten downtown before 12:00, I have no idea what the traffic problems were at that time.

Q. Well, if you got down there at five minutes to 12:00, you would not have been 15 minutes before you thought the rally was going to start; you would have been there five minutes ahead, would you not? A. I would have been there in time for the rally.

Q. You would have been there five minutes before noon, [47] would you not? A. Under what assumption?

Q. If you had arrived there at 40 minutes after you left the airport? A. That is right.

Q. You know that airline schedules are not 100 per cent certain to come off, do you not? A. Yes.

Q. Planes are sometimes late? A. That is right.

Q. Sometimes there are mechanical difficulties in getting off the ground? A. Yes.

Q. If this rally were so important to you, why did you not take an earlier flight, to take care of these possibilities? A. For two reasons:

One, Allegheny has a policy of informing its people if there are mechanical problems ahead of time—three reasons, rather.

Second, I felt that I could rely on Allegheny's scheduling in this particular circumstance. It is a well-traveled route, and they have back-up planes.

And, thirdly, I had work to do.

Q. Eastern Airlines is a well-traveled route, is it not, sir? [48] A. Between what points, counsel?

Q. Eastern Airlines is a busy airline? A. Yes.

Q. American Airlines is a busy airline? A. Yes, sir.

Q. You had been denied boarding because of overbooking on both of these airlines in recent times, had you not? A. Recent times, in what time frame——

Q. Recently, as of the 28th of April, 1972? A. Yes.

Q. As a matter of fact, the incident on American Airlines had occurred on the previous Sunday of April, 1972, isn't that correct? A. Yes.

Q. So you were fully aware that sometimes airlines overbook, and because of that, confirmed reservations do not get you on the plane; you knew that, didn't you? A. No, because they did not tell me they were intentionally overbooking or even overbooking.

Q. Did they tell you that after you arrived, and they denied you passage? I am talking about Eastern Airlines and American Airlines, now. A. They did not use the words.

Q. Well, they tendered you these denied-boarding compensation cards, didn't they? [49] A. Yes. Excuse me. Could you describe it a little more precisely?

Q. Do you not know that under the CAB regulations, when a passenger is denied boarding because of overbooking, the airline is required, then and there, to tender him what they call a denied-boarding card that explains the overbooked passenger's rights? You knew that because you had been given those by Eastern Airlines and American Airlines, had you not? A. I know I was given it by Eastern Airlines. I wanted to make sure you were not referring to the ticket.

Q. No. I am talking about the notification of your rights. A. Yes.

Q. You knew that? A. Yes.

Q. And you got one of those from Eastern, and you also got one five days previously from American, did you not?

A. I don't recollect that I received it. It might have been tendered or put in my ticket, you know, just stashed in my ticket.

Q. Well, as a matter of fact, when this incident occurred, Mr. Nader, involving Allegheny and Mr. McDonald, the service representative of Allegheny, advised you that, unfortunately, they could not get you on the plane because of an oversale, didn't he, than and there, tender you this denied-boarding notice card, [50] setting forth your rights, and didn't you say, "Never mind, I have got one from American"? Didn't you tell him that, in substance? A. What I think I told him was that I had already been offered one from American. I did not signify that I accepted it, as I recollect.

Q. But, in any event, you had on occasion read these things, so you knew what your rights were in the event of oversales, didn't you? A. You will permit me to more restrictively define your definition of "rights". I knew what they said were my rights, sir.

Q. You knew that, among your rights, you were entitled to denied-boarding compensation, didn't you? A. Yes.

Q. So you knew, when you booked—— A. Excuse me. Under certain conditions, rights to denied-boarding compensation.

Q. So you knew, when you had a confirmed ticket on Allegheny Airlines, that it was not at all certain that you would be, in fact, boarded on that plane; you had within five days experienced failure to get on under similar circumstances, had you not? A. No.

Q. Didn't you tell us that on the 23rd of April, 1972, [51] on an American Airlines flight from Washington to Boston, you were denied boarding because of an oversale? A. "Under the similar circumstances" means that they informed me that the plane was overbooked. They did not inform me that the plane was overbooked, in so many words.

Q. They gave you a denied-boarding compensation card which explained your rights; American Airlines did that,

did they not? A. Yes, but that did not indicate any overbooking or any intentional overbooking.

Q. Whether it is intentional or not, you knew that you were entitled to denied-boarding compensation by virtue of those recent experiences; didn't you know that? A. Yes, but I would not——

Q. And that is the reason you did not accept the denied-boarding card from Mr. McDonald, or declined to take it, isn't that so? A. Because I already knew what it said.

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Q. Mr. Nader, you did not personally file a notice in writing with an official of Allegheny Airlines to the effect that you were going to make a claim arising out of this incident within 45 days of the incident, did you? A. Not in writing, myself.

[52] Well, nobody did on your behalf within 45 days, did they? A. Not in writing.

Q. Your counsel that you retained to file a lawsuit is not the same counsel that is trying the case here for you, is it? A. That is correct.

Q. You had a Mr. Crockett? A. That is correct.

Q. And you placed the matter in his hands? A. Yes, sir.

Q. And you are aware that it was not until June 19, 1972, that he wrote to National Airlines—not National, but Allegheny Airlines, saying that he intended to file a complaint arising out of this incident? A. That is right.

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Q. On the morning of this flight, what time did you leave your home, Mr. Nader? A. Sometime between 8:00 and 9:00.

[53] Q. Do you live in downtown Washington? A. Yes.

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Q. And then what time did you actually depart downtown Washington to the airport? A. Twenty of 10:00.

Q. This was on a Friday? A. Yes.

Q. This was on a Friday, was it not? A. Yes.

Q. You know Friday to be a heavy-travel day, do you not? A. Not particularly in the morning.

Q. Your answer is that you do not think it is on Friday in the morning? A. No.

Q. Particularly heavy? A. No.

Q. If you left downtown Washington at 20 minutes to 10:00 to catch a 10:15 flight, was that not, in itself, cutting it a little thin? A. No.

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[54] Q. And, in fact, it took you some 25 minutes to make the trip on this morning, this Friday morning, isn't that so? A. Yes, longer than I anticipated.

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The Witness: It took probably 25 or 24 minutes, to be exact.

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[55] Q. You learned that this particular flight was boarding at Gate 17, didn't you? A. That is right.

Q. And that is some over 1000 feet and on a different level from the Allegheny ticket counter, isn't it? A. I understand from your calculations is was 1037 feet, sir.

[56] Mr. Roberson: Your Honor, there is a stipulation that was entered into at the deposition that it is 1037 feet between the Allegheny counter where he came in and Gate 17 where this flight was boarding. That was a stipulation between counsel at the time of the deposition.

The Court: All right.

By Mr. Roberson:

Q. Did you walk or did you run that 1037 feet, Mr. Nader, on this morning? A. I walked very fast.

Q. You were not worried about missing the plane? A. No.

Q. When you got to the ticket lift position at Gate 17—incidentally, that was at the extreme end of a long corridor, was it not? A. Yes.

Q. When you got there, you recognized John Koskinen? A. Yes, I did.

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[57] Q. How long have you known Mr. Koskinen? A. Oh, about two years, prior to that time.

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Q. In any event, he was already there at the scene ahead of you, was he not? A. Yes.

Q. Did you learn later that, or did you learn at that time that, Mr. Koskinen had already been denied boarding? A. I learned that at the time of arriving at the ticket lift gate.

Q. And was there another young man—I don't expect you to remember his name—who was also denied boarding on this flight? A. I could not say exactly. There were a number of [58] people in that vicinity. I could not distinguish who was denied or who was just a relative seeing somebody off or whatnot.

Q. You knew that at least one was denied boarding in addition to you and Mr. Koskinen, though, didn't you? A. I would not say precisely. I knew there were some others, but I did not know precisely how many.

Q. And you knew that the others had arrived at that ticket lift position ahead of you, didn't you? A. I would assume some did, yes.

Q. You were the last one that was denied boarding to arrive at the ticket lift position, were you not? A. So far as I know.

Q. Did you learn the name of this Allegheny representative that you talked with there at the gate? A. At the time?

Q. Have you learned it at all? A. Well, you mentioned Mr. McDonald.

Q. Yes. A. Yes.

Q. Mr. McDonald did not know until after he had already told you that he was sorry, the plane was full, he did not know anything about your having to make a speech, did he? A. Well, he told me the plane was full, and then I pleaded

with him. So the answer to your question is: he knew right after the first communication to me that the plane was full, [59] sir.

Q. Then the answer is that at the time he first denied you boarding, he did not know about it, did he? A. Correct.

Q. Did you mention the particular speech you were going to make or the organization? A. I think I said something to the extent of I have to make an important speech at a rally in downotwn Hartford.

Q. You did not mention the Connecticut Citizen Action Group to him, did you? A. No.

Q. You have no reason to know that Allegheny Airlines ever heard of the Connecticut Citizen Action Group until this event, do you? A. I would suspect they have heard about it, because it had been very widely in the news for the prior year through the Connecticut newspapers, radio, TV.

Q. You do not know it, do you; you do not know that to be a fact: that Allegheny ever heard of it? A. No, I do not know it for a fact.

Q. You decided eventually not to take this—try to make the connection by way of Philadelphia, and you flew instead to Boston? A. That is correct.

Q. And the ticket to Boston cost you about $3 more than [60] the ticket to Hartford would have cost you? A. Yes.

Q. Mr. Nader, are you familiar with the fact that businessmen sometimes make reservations on more than one flight in order to be sure that there will be a flight when their conference ends or whatnot; are you aware of that? A. No.

Q. You have never heard of any individual booking flights on more than one flight? A. I have heard of students, for example, doing that.

Q. You know that happens, do you not? A. I know it has happened.

Q. And you know that is what is called a no-show, when they fill only one of those reservations, do you not? A. Yes.

Q. You know that has been a problem for the airline industry for a long time, has it not? A. I know they think it has been a problem.

Q. You do not think no-shows and cancellations are a problem for the airline industry? A. No, because I know that they can have appropriate remedies; and, indeed, one airlines has already developed an appropriate remedy to make it not a problem.

Q. What airline is that? A. Eastern.

[61] The Court: What do they do, just for my information?

The Witness: They have a leisure class where, in effect, they fill a plane, and the next person that calls is asked if he or she wants to be in leisure class, and that means that they go out to the airport, and if they do not get a seat, then they are put on the next flight, as I understand it.

It is a little better than a stand-by status, Your Honor.

The Court: But the flight that they fail to show up for leaves with a vacant seat?

The Witness: No, because the minute the plane is filled, the next person calling Eastern Airlines is told that the plane is full, but he can be put on what they call leisure status, which is a little better status than stand-by.

The Court: I see.

By Mr. Roberson:

Q. Mr. Nader, is one of the groups that you organized called Aviation Consumer Action Project? A. Yes, I helped organize it. Yes, sir.

Q. And you have your counsel, Mr. Reuben Robertson here. He is the director and the secretary of that organization, is he not? A. I believe so, yes.

Q. Are you aware that, when Eastern Airlines was attempting to experiment with this leisure class or conditional [62] reservation, which you have indicated to His Honor would be a solution to no-shows, that the Aviation Consumer Action Project filed a complaint with the CAB, the Civil Aeronautics Board, on May 21, 1971, saying that this experiment would constitute a fraud on the consumers, is

practically unworkable, and in most cases would be an empty reward and a deceptive device to victimize passengers; and that even though it might temporarily ameliorate the problems of no-show passengers at the expense of its competitors, the solution could not be achieved without committing fraud on many passengers?

Do you realize your group was doing that with respect to this experiment that you now mention to His Honor as being a solution to no-shows? Do you realize that? A. Yes. May I make the distinction that they are representing——

Q. I did not ask you for a distinction. I just asked you if you realize that they said that? A. If you want to be that precise, counsel, would you please read the question back, and then I will take the opportunity to answer.

Q. I think you answered it. A. Because I think you characterized it.

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[64] Q. Mr. Nader, when Mr. McDonald was talking to you about the possibility of making a connection via Philadelphia, he told you that if the connection were made, it would put you in Hartford about 55 minutes after your Flight 864 was scheduled to arrive, didn't he? A. I don't recall whether he was that precise, but——

Q. Well, you knew it would arrive about 12:10 or 12:15? A. Yes, around 12:15.

Q. And you knew that your own flight was to arrive there at 11:15, Flight 864? A. Yes, I knew that the flight from Philadelphia was scheduled to arrive at 12:15.

Q. And were you not interested in that when you first heard about it? A. I was interested in seeing when the new connection was supposed to arrive. I was no longer interested when I heard it was about 12:15.

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[65] Q. The Connecticut Citizen Action Group did not buy any ticket from Allegheny Airlines for you to come up there on, did [66] it? A. No, they did not.

Q. You bought your own ticket? A. That is right.

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[67] The Court: What evidence do you have, sir, that the action of the airline in refusing passage on the particular flight that you were not allowed to board was intentional?

The Witness: The evidence is an admission by the defendant that they have a systematic policy of overbooking, and that they do not inform the consumer of that policy of overbooking.

That they announce in their advertisements a clear implication that the airline company would honor reservations and take people to their desired destination on scheduled flights.

The Court: Anything else?

The Witness: And I think there is evidence in the deposition that was taken that there was an active attempt to conceal—not only a non-disclosure of this practice to the passenger or consumer, but an active attempt to conceal. This is indicated in their instructions to employees as to how to explain an overbooking.

The least that could be expected is for the passenger to be told that the flight is full.

The Court: Those three things, then, are the factual basis upon which you claim that there was an intentional act on [68] the part of the defendant airlines to refuse you passage on this flight?

Mr. Robertson: Your Honor——

The Court: Is that correct?

The Witness: I think there are three: the policy of overbooking, the non-disclosure of that fact, the active concealment of that, and the promotion in their advertisements indicating to the contrary.

Mr. Robertson: Your Honor, I assume that you are asking this witness' knowledge.

The Court: I am asking for this witness' knowledge, yes.

Mr. Robertson: There are other facts of record that are in the documentary evidence that substantiate this.

The Court: How do you know that there is a systematic policy of overbooking, Mr. Nader?

The Witness: I think that was admitted by Mr. Barnes, if I recollect correctly, in his deposition. He is president of Allegheny Airlines.

The Court: All right.

The Witness: And I think there is documentary material that counsel has that supports that, as well.

The Court: Now, do you have any advertisements here that imply that they will take people who reserve flights, regardless of whether the reservations exceed the number of seats? [69] Do you have any ads that say that?

The Witness: I don't have any ads with me, Your Honor.

The Court: Or do you have any ads that imply that?

Mr. Robertson: We do have an admission by the president, Your Honor.

The Court: Let me ask the witness, counsel. If you think I am being improper or unfair, you can object. Do you have any ads with you that imply——

The Witness: Not with me, Your Honor.

The Court: (Continuing) —that the airline will take people who make reservations, regardless of the number of seats available?

The Witness: I don't have any ads with me.

The Court: Have you ever seen any?

The Witness: Yes, I have.

Mr. Roberson: Excuse me, Your Honor. I don't think he has——

The Witness: Well, just let me——

Mr. Roberson: (Continuing) —and I would object to this, because I certainly do not think that any such ad exists, at least not by Allegheny.

The Witness: If you will just let me finish.

Mr. Roberson: I don't want any hearsay.

The Court: Your objection is noted. My function is [70] to find the fact, and if he has any evidence of it, I want to see it.

You say you have seen it, but you do not have it with you.

The Witness: What I am saying is my understanding, when these ads are put in newspapers with schedules——

The Court: Yes.

The Witness: (Continuing) —you know, that there are ten flights to Hartford a day——

The Court: Yes.

The Witness: (Continuing) —my understanding is that if you make a reservation and the company agrees to give you a seat, that you have a seat.

The Court: And you say that that implies that they will take people, regardless of the number of seats on the airlines? Is that your position?

The Witness: No, it is not. My position is it implies just the reverse. My implication is that if you reserve a seat, you will get one.

The Court: Regardless of the number of seats on the aircraft?

The Witness: That is my understanding. You see, my understanding from these ads is that they would not give you a seat if they do not have one available; that is, if their capacity was not enough for it.

[71] The Court: All right. Then you wish to change your testimony, I take it, to the effect that they would only give you a reservation if, at the time of handing you a reservation or agreeing to give you one, they had a seat available.

The Witness: Yes, that is right.

The Court: All right. So the ads do not imply that they would not give you a reservation unless, they, in fact, had a vacant seat and had not been oversold?

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Mr. Robertson: We have two double negatives there, Your Honor. I am trying to figure out—

The Court: You will have all the opportunity you want, sir, and I do not want the witness to feel, or you to feel, or Mr. Robertson to feel, the court is taking advantage of this or any other witness in this case or any other case.

But I think this witness would be the first to object, and he has the right to object, and I want him to know that he has the right on his own.

[72] The Witness: I want to be certain that I was not tripped up by a double negative.

The Court: Pardon me?

The Witness: I just hope I was not tripped up by a double negative.

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Redirect Examination

By Mr. Robertson:

Q. Mr. Nader, based on the promotion and advertisements that we have been talking about, is it your understanding that Allegheny, based on these ads, will not sell a confirmed reservation to a passenger unless it has the space to sell, in fact?

Mr. Roberson: Excuse me, Your Honor. I object to that because there aren't any such ads. I just do not think that he ought to say based on some ads when we do not have any ads in evidence.

We can't see what he is talking about, and, therefore, I think it is an objectionable question.

The Court: Well, I think it is an objectionable question, too, but, unfortunately, Mr. Roberson, I asked the question and opened the door.

Now, if there is any blame, it is going to be on the [73] court.

You may answer.

By Mr. Robertson:

Q. Is it your understanding that Allegheny is not going to sell you a confirmed reservation unless it really has the space to sell on the plane? A. Yes, that is my understanding.

Q. And that is based on the advertisements and the image that you have? A. As I understand their advertising and literature, the meaning of it.

Q. Mr. Nader, you testified before that the rally was scheduled for 12:00 o'clock? A. Yes.

Q. What was the basis of your knowledge of that? A. It was communicated to me that that was the time for starting the rally from Connecticut.

Q. And who told you that? A. It was communcated to me through Miss Colmore.

Q. And did you learn later that the time for the rally was changed to 12:15? A. Yes, after the incidents involving Allegheny's overbooking.

Q. You learned it after? A. Yes.

[74] Do you know why it was changed? A. Yes, it was changed in order to give the crowd time to leave their jobs in nearby offices and assemble in the Plaza and in order to have just a few minutes to meet with the staff at the Plaza of the Connecticut Citizen Action Group.

Q. Now, in cross-examination you testified that the crowd could not be expected to stay until 12:45 or 1:00 to await your arival. What is the basis for that testimony. A. That this was an audience that was assembling on their lunch hour, and that their lunch hour is between 12:00 and 1:00, and they have to get back to work.

You see, there are many office buildings sort of surrounding this plaza, and they have to get back to work at 1:00.

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[75] Q. Well, did you learn how close the connection had been in Philadlphia for those passengers? A. Yes, I think Mr. Koskinen indicated that it was a very close connection.

Q. In fact, two or three minutes' connection? A. Yes.

Q. Was this a legal connection that was offered to you in Philadelphia?

Mr. Roberson: If it please the Court, I object to that. I don't think it is material. He did not decline to go because he thought it was legal or illegal. He just thought it was too close.

The Court: Well—

Mr. Roberson: In trying to accommodate these people, they held up a flight.

The Court: I assume by "legal," he means was it scheduled to leave at the time stated. Is that what you mean, sir?

Mr. Robertson: Well, there are some connections that cannot properly be made, that cannot properly be booked, by [76] an airline because the connection is too tight. That is called an illegal connection.

The Court: Oh, well, then, I will allow it. The objection is overruled.

By Mr. Robertson:

Q. Do you know whether that was a legal connection that was offered to you or an illegal connection? A. No, the airlines consistently say there has to be 30 minutes between connections for them to schedule a second aircraft to take you to your further destination.

Q. Was this a legal connection that was offered to you, or was it not? A. No, is was not.

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[77] Q. Mr. Nader, you asked Mr. McDonald at the gate whether he could find out and make an announcement on the plane whether anyone would step down and volunteer to take a later flight so that you could make your important engagement.

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Q. Why did you do it this time? A. Because it was an extraordinary situation, to reach a gathering that could not be postponed.

Q. Did you explain that to the agent? A. Yes, I conveyed that meaning to the agent, and I think he understood it. He just felt that it was beyond his capability to do anything about it.

Q. Were you asking the agent to kick off anyone from the flight who had a confirmed reservation? A. No, I

was simply asking if anybody would volunteer to take a later flight.

Q. And what led you to believe that somebody might conceivably do this? A. Because I had been on airplanes where this had been [78] done. For example, a Congressman wanted to get on an airplane in order to meet a situation, or one person in a family of five, and the request is often made under such circumstances by the hostesses whether anybody would be on a sufficiently leisure schedule as to take a later plane.

Mr. Roberson: Your Honor, I object to this. It is hearsay. I don't know whether this has ever occurred or not.

By Mr. Robertson:

Q. Do you know whether it has ever occurred, personally?

Mr. Roberson: Well, it has not occurred, so far as I am concerned, on my airline, and I think it would be hearsay.

The Court: If he knows whether it has occurred on Allegheny, I will allow it. Otherwise, I will sustain the objection. Do you know whether it has ever been done on Allegheny.

The Witness: Yes, it has been done on Allegheny.

The Court: All right. And on this particular flight?

The Witness: No.

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[79] The Court: Now, gentlemen, I note the hour is 12:10. What can we accomplish before our luncheon recess? We are nearing our luncheon recess, but, of course, as I told you I believe on Friday, whenever it was that you were here last, I must finish this trial today.

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[82] Mr. Robertson: Well, we have tried to limit the case that we are going to put on in front of Your Honor. Most

of our case was documentary. We had to prove Mr. Nader's damages and the fact of the occurrence.

[83] We are not going to put on any other direct case, Your Honor.

The Court: This is your direct case except for—

Mr. Robertson: Except for Mr. Barnes and Mr. Moffett and the documentary evidence.

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[96] The Court: All right. Well, then, may I assume, Mr. Robertson, you would at this time move into the record the deposition of Mr. Barnes?

Mr. Robertson: The deposition of Leslie O. Barnes, yes, sir.

The Court: All right. That will be received, Madam [97] Clerk, as plaintiffs' exhibit what?

The Clerk: Plaintiffs' Exhibit 24.

The Court: All right.

(Plaintiffs' Exhibit No. 24 received in evidence.)

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[98] The Court: I promise you I will read the whole thing, every word of it.

[99] The Court: And I will do that. Now what else do you have to offer?

Mr. Robertson: Well, we have nothing further on our direct case.

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[108] The Court: Let us set a date for Mr. Moffett's testimony.

The Clerk: Monday, the 10th, at two o'clock.

The Court: All right.

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Jerome E. Huisentruit

was called as a witness, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Roberson:

Q. You are Mr. Jerome F. Huisentruit? A. Yes, sir.

Q. And what is your occupation? A. I am an attorney.

[109] Q. Are you employed by one employer, or do you practice generally? A. I am employed by one employer. I am assistant general counsel for the Air Transport Association of America, sir.

Q. And what is that? A. That is a trade association representing the certificated, scheduled U. S. airlines.

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Q. When did you graduate from law school? [110] A. In June of 1957.

Q. From what law school? A. Georgetown University.

Q. And what employment did you thereafter have? A. After I was admitted to the bar, later that year, I became employed with the Civil Aeronautics Board in February of 1958, and remained there until February of 1968, eleven years, sir.

Q. In connection with your duties with the Civil Aeronautics Board, did you become familiar with the jurisdiction of the board? A. Yes, I became thoroughly familiar with the jurisdiction of the board, having worked within the board in several divisions, including the Bureau of Air Operations, the Agreements Division thereof, dealing with Section 412 agreements, with control and interlocking relationships.

I then worked for over two years with the Bureau of Enforcement dealing with the jurisdiction of the board, or with the enforcement activities of the board, covering the various requirements that they enforce.

For the greater part of my time with the board, starting in 1963 through 1968, or February of 1968, I worked with the Bureau of Economics in the Rates Division.

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[114] Q. In connection with your work before the board, did you have anything to do with efforts to ameliorate the overbooking problems of the airlines and the no-show and cancellation problems that they were having? Did you have anything to do with that? A. Yes, I did.

Q. Has the board ever banned overbooking practices by the airlines? A. The board has not banned overbooking practices by the airlines. The board has, to the contrary, recognized the necessity for overbooking in the climate in which the airlines operate and has sought to ameliorate the harmful effects which may in certain instances result from overbooking. But overbooking, itself, has not been prohibited at any time by the board.

Q. How do you know this to be the fact? [115] A. Well, as I mentioned, I spent the greatest part of my time with the Rates Division of the Civil Aeronautics Board, and during my tenure there—I believe it was in 1965—the board proposed a rule-making proceeding relating to overbooking, which would—

The Court: When was that?

The Witness: In 1965, initially.

The Court: All right.

The Witness: I believe it was EDR 95. I am not certain of the number. I believe that was the number.

The Court: That is all right.

The Witness: And, as a member of the Rates Division legal staff, I worked on the proposal, as a rule-making proposal, with the formulation and the recommendation of that proposal to the board, which, if I may continue, would have—the basic provision of which would have required that in cases of overbooking the carriers notify all passengers on each flight 12 hours in advance that their particular flight has been overbooked.

This was issued as a notice of proposed rule-making, and, as a result thereof, the interested persons had an opportunity to file comments.

Comments came in from many parties, including the airline industry.

I was the person on the rates staff who analyzed those comments, re-evaluated them, and recommended a subsequent [116] rule-making proposal. I do not recall the number.

Q. You recommended it to who? A. Within the board, to the general counsel's office. We did the—the Rates Division legal staff did the work on that matter, since it involved an area within our primary expertise. That proposal was to susbtitute a new rule for the former one. This came out in January of 1957, and essentially that proposal would have recognized——

Q. 1957 or 1967? A. I am sorry. It was 1967.

Q. Yes. A. (Continuing previous answer)—would have recognized the overbooking necessity within the industry; would have not required the carriers to notify their passengers of an overbooking situation; but would have required that in the unfortunate event that overbookings actually resulted in oversales, that adequate compensation must be paid to those passengers who are denied boarding.

Q. Was it left at "adequate" or did they actually set up a schedule? A. Well, they set up a schedule which many thought was more than adequate, if you wish me to explain the schedule. It was roughly 200 per cent of the first remaining flight coupon, with a minimum of $50 and a maximum of $200.

[117] Now, this would not be in lieu of the ticket which was purchased. It would be a compensation. In other words, if you had purchased a $50 ticket and were denied boarding, your ticket would still remain good, but you would get 200 per cent of that ticket, or $100, as compensation for the inconvenience caused you in being denied boarding.

Q. Ultimately, was that cut down somewhat to what the board thought would be adequate compensation? A. Yes, it was. There were several problems presented to the board, principally with relation to the smaller carriers. It was felt that the minimum of $50 was too high, and the board cut that down to $25. Also, the maximum remained the same of $200, but the general compensation would have been 100 per cent, rather than 200 per cent of the flight coupon because of arguments that were made that beyond that would be a pure windfall and might lead to further abuses by passengers in the reservation process.

Q. And it is based on that experience, and knowing what the board did in that connection, that you say that they have never banned overbooking, but, in fact, have recognized it and provided, rather than banning it, that the carriers tender this denied-boarding compensation in the event of an oversale; is that the situation? A. That is absolutely the situation.

Q. Did they say anything in addition that the carriers would have to do with respect to deciding among several passengers? [118] Suppose three of them showed up who were oversold. Did they undertake to provide for which of the passengers should be boarded in the case where somebody should cancel out at the last second? A. They did not prescribe any method by which the carriers would have to choose between those who would be denied boarding. What the board did prescribe, in recognition of its obligation as a regulatory agency to prevent unjust discriminations, preferences, or prejudices, was to require that each carrier maintain a manual setting forth the manner in which it will exercise its denial of boarding to passengers.

The rules which it will exercise must be stated in the manual, and that manual must be filed with the Civil Aeronautics Board.

Q. So those priority rules differ between various carriers, do they? A. It was left to the individual carrier, and they do it differently between carriers. That is correct.

Q. Now, suppose that a carrier has a priority regulation which it promulgates. Does the court in a civil action have primary jurisdiction, or does the CAB, as to the reasonableness of that rule, as distinguished from whether or not it was violated? A. The question of reasonableness of that rule, as would be true of any tariff rule or rule relating or applicable to passengers and their transportation, would be a question under the primary jurisdiction of the Civil Aeronautics Board [119] or other utility that may regulate that mode of transportation.

Q. Now, then, the documents that would reflect the board's policy decision with respect to overbooking, would that be CAB economics regulation—let me show you.

Mr. Roberson: I need not even go through this formality, Your Honor, because there was no objection to these particular exhibits.

I want Defendant's D and E. These I wish to be offered in evidence and received in evidence at this time.

The Court: There being no objection, they will be received.

(Defendant's Exhibits D and E received in evidence, respectively.)

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[120] Mr. Robertson: Your Honor, the entire document will be in the record, am I correct?

The Court: Yes.

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[121] Mr. Roberson: The first extract from this document, dated January 10, 1967, is from this Notice of Proposed Rule-Making in which the CAB recites the problem and its tentative views.

From page 2 of that there is a recitation about the carriers' view that they should not be required, when they have an overbooking situation, to call up the passengers 12 hours in advance. I want to read that extract.

"The carriers unanimously oppose the rule proposed in EDR-95, particularly the provisions of the new Part 250

requiring a notice to passengers of an overbooked condition."

Going over to page 2, in the second paragraph:

"The oversales problem, therefore, is a severe one. It causes distress, inconvenience and damage to passengers. It impairs the public image of air carriers, casting doubt on the integrity of their reservations practices. Clearly, it is incumbent on the board and the carriers to do all within their powers to eliminate oversales [quote] to the extent feasible [close quote]."

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[122] Mr. Roberson: Obviously, it is for the purpose of illustrating what the witness has said: that they have not banned it. They have not banned oversales.

Now, on the next page, page 3:

"In light of carrier comment and other considerations, the board has tentatively determined not to finalize EDR-95. Rather, we propose to deal with the oversale problem by other means for the following reasons:

"1. The proposed notice requirement of EDR-95 would have necessitated substantial changes in the reservations practices and systems of carriers, and the board is not prepared to require such change in a system which has on balance worked reasonably well in the public interest.

"2. Various methods are available to the carriers to reduce the dimensions of the oversales problem by limiting or curtailing certain aspects of their reservations practices.

"3. Finally, the board believes the oversales problem can be substantially reduced by proposals herein to require carriers (a) to make prompt, effective, and adequate compensation to oversold passengers, (b) to establish priority rules for determining which passengers holding confirmed reserved space shall be denied boarding on oversold flights, and (c) to file reports of unaccommodated passengers."

The next thing I wish to read is from page 4, Your Honor.

[123] The Court: Let us assume that all of Exhibit D is in the record. Do you still insist on reading them all?

Mr. Roberson: I do not insist.

The Court: I will read them. I will read them, Mr. Roberson.

Mr. Roberson: Very well, sir.

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[124] Cross-Examination

By Mr. Robertson:

Q. Where did you attend law school, sir? A. Georgetown Law School.

Q. And what was your area of specialization? A. I specialized in administrative law in obtaining my Master's Degree in 1960, but in my undergraduate work I took the general curriculum. Most of my courses were prescribed, rather than electives.

Q. What was your employment after law school? A. My sole employment after law school—in the legal field, I assume you are asking me, because I was working between [125] the period that I got my law degree and when I passed the bar in a non-legal position.

But my sole employment in the field of law was with the Civil Aeronautics Board, starting in February of 1958, until February of 1968, as I mentioned, and then I was employed by the Air Transport Association since that time to the present.

Q. Have you ever worked for an airline? A. I have not worked for an airline at any time.

The Court: You mean directly?

Mr. Robertson: Yes.

The Witness: That is correct.

By Mr. Robertson:

Q. Now, have you written any scholarly articles? A. I don't know whether I would call them "scholarly". I have written many memoranda while I was with the Civil Aeronautics Board on regulatory problems within the agency and within the jurisdiction of the agency which——

Q. They were not published? A. (Continuing)——have not been published. No, they have not been published. I have also written about six or eight papers which were as part of my Master's Degree at Georgetown University, and which were not published, but were part of the degree requirements.

Q. Have you made any study of the actual overbooking practices of United Airlines?

[126] A. I have not.

Q. Have you made any study of the actual practices of American in this regard?

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A. Not that airline, nor any other airline, I might add.

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Q. Well, do you know specifically what the overbooking practices of these airlines are? A. I know that the practice which I became familiar with in my regulatory position with the Civil Aeronautics Board, as represented to us at that time, was that an analysis is made of a market, that is, Points A and B, by each carrier. Based upon the no-show and the late-cancellation experience in that particular market, a statistical analysis is made that there will be "X" empty seats on the airplane, even if they book it 100 per cent.

Q. Well, now—— A. On that basis the carriers book "X" number of seats more than they have in inventory to compensate for the number of [127] no-shows and the late cancellations.

Q. And you did that work and you learned that when? A. This was in 1965—during the period of 1965 through 1967, during the rule-making proceeding.

Q. All right. So we are talking about—— A. I did not get into the statistical exercise, mind you. I am just speaking of the theory or the practice that was represented to the board as having been done by the airlines.

Q. Six or eight years ago? A. That is correct.

Q. But you do not know what the practices are today, do you? A. Not personally. On hearsay, I do.

The Court: Do you have any evidence that they have changed from when he testified?

Mr. Robertson: Yes, Your Honor.

The Court: You do?

Mr. Robertson: Yes.

The Court: Are you going to present that?

Mr. Robertson: Yes, Your Honor.

The Court: All right.

By Mr. Robertson:

Q. Were you an expert on these practices or their economic necessity? A. I would consider myself an expert in that area to [128] the extent that any experts exist, at least as the situation existed in the middle 1960's and beyond.

Q. You are an expert on the economic aspects and the practical aspects? A. Yes, I think so.

Q. What is that expertise based on? A. My expertise is based on the fact that I worked in the area of rate-making and was familiar with the economic condition of the carriers individually and as an industry.

I also worked in that rate area on tariff rules. I was familiar with the problems with respect to no-shows. I was familiar in my regulatory capacity with the attempts of the carriers to have no-show penalties.

I was counsel in a case involving the Puerto Rico market where an effort was made to alleviate the no-show problem by forfeiture of the ticket, for example. This is a case of record, I don't have the citations.

Q. Well, I understand that you were an attorney in these cases, but does that make you an economic expert? A. To the extent that there are economic experts, I would hold myself out as one.

Q. Have you ever qualified as an expert witness on these matters? A. Today is the first time I have testified in any

proceeding with respect to this matter, although I have served as [129] adviser to the board, and I would hope that they would value by judgment as an expert during my tenure with the board.

Q. Did you know approximately how many people were actually denied boarding on domestic U. S. flights in 1970? A. In 1970?

Q. Yes. A. In 1970 I did not keep up with the statistical changes in the overbooking problems since I left the board.

Q. Is your answer no, that you do not know? A. I do not know.

Q. Do you know how many people were denied boarding on U. S. domestic flights in 1971? A. I saw the statistics. I don't recall them. I believe that the *Aviation Daily* publishes them every so often. I don't recall what they are.

Q. Do you know what they are so far as 1972 is concerned, sir? A. I can tell you what the industry averages per 10,000. I can't give you the total picture, no.

Q. You can't give me the total? A. No.

Q. Well, is it accurate if I said that almost a quarter of a million people were denied boarding on flights for which they held confirmed reservations during these three years?

Mr. Roberson: May it please the court——

[130] The Witness: I have no way of knowing.

Mr. Roberson: May it please the court, I would object to that. That is the very point.

This is a CAB problem. It is not something that he testified about on direct examination. His testimony was that the CAB has made a policy decision not to ban overbooking. That is all he has testified about.

Now, I don't think that, therefore, becomes material, as to whether 10,000 or 1000.

The Court: The objection is overruled. I think it comes within the scope of the direct.

By Mr. Robertson:

Q. Are you familiar with the CAB actions recently in the area of denied-boarding compensation and oversales? A. What period are you speaking of?

Q. Well, say, in the last three years. A. I am not deeply familiar with those actions. I have not continued my——

Q. So if the CAB has changed the rules since you were there seven or eight years ago, they might have done that for all you know, right? A. I believe they have made some changes, but I am not an expert as to what changes were made after I left the board.

Q. You are not an expert as to what has happened in the six or eight years—in the six years since you have left the [131] board? A. That is correct.

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[134] Q. To whom do you report at the ATA, that is, the Air Transport Association? A. Right. Principally to Mr. James Landry, who is general counsel of ATA.

Q. And to whom does he report? A. He reports to either the president of ATA, Mr. Paul Ignatius, or to the chairman of the board, Mr. Tipton.

Q. And to whom is the staff ultimately responsible? [135] A. The staff ultimately is responsible to the board of directors of the Air Transport Association, which consists of the presidents of the airlines.

Q. Who is Leslie Barnes? A. Mr. Barnes is president of Allegheny Airlines.

Q. And is he a member of the ATA board? A. I believe he is. I am not certain.

Q. Is he active on any of the committees of the ATA? A. I have never met the man. I am not familiar with him personally at all, except that he is the president of Allegheny Airlines.

Q. How are the ATA's expenses paid? A. By the membership on a dues formula.

Q. And does Allegheny pay part of that? A. Yes, indeed.

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Q. Do all the ATA members intentionally sell more reservations for their flights than they have seats available? A. At the present time?

Q. Yes. A. I do not know for certain. I believe they do. They represented to the board at the time I was there, and working on [136] the problem, that they did, yes.

Q. How is the public informed of this? A. Well, I assume, No. 1, that—well, I don't assume, I know.

No. 1, all the matters that were involved in rule-making becomes public documents and these are open to the public at large.

Q. Well, do you know whether the airlines tell the passengers specifically about this practice? A. The overbooking practice?

Q. Yes. A. Well, I would say, on the basis of their representations in 1965, they did not want to advise the passengers that they were overbooked, because this would needlessly alarm them, on which the CAB agreed with them.

I would say that they do not notify that they are overbooked, sir.

Q. Is the overbooking practice and the circumstances set forth in the airlines' tariffs? A. Certain aspects of —well I don't know them. If I would answer you correctly, I would say that—

The Court: Well, is it, or is it not, set forth in the tariffs, the overbooking practices?

The Witness: The oversale compensation is.

The Court: The overbooking compensation practices? [137] The Witness: Yes, the rules with respect to compensation are set out in the tariff, itself.

By Mr. Robertson:

Q. Well, the compensation is available in many circumstances where an oversale has not necessarily occurred—strike that.

Isn't it accurate that compensation applies to broader circumstances than just an intentional overbooking? A. It applies to all cases of denied boarding.

Q. Which may be because in certain cases of an equipment substitution? A. If I am not mistaken, I believe

that a substitution of equipment is an exception from the denied-boarding compensation rule.

Q. That exception is set forth in the rule? A. It is set forth in that rule, Part 250.

Q. Or an unintentional error that someone may have made in wrongfully or mistakenly confirming a reservation? A. For whatever reason the denied boarding may occur.

Q. Yes, sir. A. If it is not excepted in the rule, the tariff rule applies.

Q. But that would be one of the circumstances, right? A. Pardon?

Q. That would be one of the circumstances in which [138] denied-boarding compensation could be paid, pursuant to this tariff, right? A. That is correct.

Q. So the fact that a tariff exists that relates to a variety of circumstances under which you are going to get some compensation, that tariff does not tell the passenger that there is an intentional overbooking practice in the airlines, does it, sir? A. It does not.

Q. Okay.

The Court: Now, let me ask you a question:

You said a moment ago, at the time you were with the board, all of the members of the ATA who intentionally sold more tickets than they had seats did not inform the public. Wasn't that your testimony?

The Witness: That is correct.

The Court: Is that still true today?

The Witness: I don't know. I believe it is.

The Court: All right.

The Witness: This was the proposal, Your Honor, in EDR-95, to require them to inform the public.

The Court: You believe this is true today.

The Witness: I believe it is true today.

The Court: Could I rely on that as a fact?

The Witness: I think you can, Your Honor.

[139] The Court: All right.

By Mr. Robertson:

Q. You are an expert on the existing tariffs, right? A. On tariffs which are filed today?

Q. Yes. Yes. A. I am an expert on the law of tariffs and on the particular tariffs as they existed when I was with the board, but in my duties within the Air Transport Association I have not worked with individual carrier tariffs.

Q. Well, let me ask you about an industry-wide tariff. A. Okay.

Q. What is CAB Tariff 142? A. That sounds like a rules tariff. Isn't that the passenger rules tariff?

Q. That is my understanding. A. Yes.

Q. Are you familiar with Rule 66 in that tariff? A. Not by number. If you give me something other than the number, I may be.

Q. Well, have you ever heard of a conditional reservation? A. Yes, indeed, I have.

Q. Well, when was this put into effect? A. This is a proposal of Eastern Airlines. I believe the year was—it was within the last two years, was it not?

[140] Was it approved by the CAB? A. Yes, it was.

Q. And what was the basis of the CAB's approval of this tariff. A. I don't know.

Q. Are all tariffs approved by the CAB A. Well, the use of the word—I have to give a little narrative explanation.

Q. Fine. Go ahead. A. We use the word "approved" rather loosely. What actually happens is that the carriers are required to file a tariff thirty days, at a minimum, in advance of the proposed effective date.

If the board does nothing to that tariff during that 30-day waiting period, it goes into effect.

Now, then, we call that: the board has approved it. Actually, in certain cases it may not even have looked at it or have analyzed it at all.

The Court: In those situations it would be where there was no objection?

The Witness: Absolutely. If there is an objection, the board must look at a tariff.

The Court: But, generally, if a tariff does not go into effect without objection during the 30-day period after it is filed, it would be because somebody objected and, thereby, called [141] the board's attention to it; isn't that the way it works?

The Witness: It works that way most times, Your Honor, but the board's staff in the Rates Division, at least while I was there, did a fairly careful job of screening tariffs on their own motion and bringing problems to the attention of the board, even though there were no public complaints.

The Court: I see. All right.

By Mr. Robertson:

Q. But you do not know whether they are still doing that or not? A. (No response)

Q. Do you know? A. Well, since the same ultimate supervisor works there who did when I was there, I would say they do on that basis. Because that was his idea of public service.

Q. But, in reality, an airline could file any sort of proposed rule in its tariffs, and, unless it was challenged either by the staff or by another party, it would go into effect, is that right? A. If nobody challenged it, it would go into effect. That is correct.

Q. Yes. A. By "nobody." I mean including the board.

Q. Now, this conditional reservation that was introduced by Eastern Airlines, what did this provide for? [142] A. I can tell you in general terms.

Q. Well, tell me as much as you know about it. A. As much as I know about it.

Q. Yes. A. And I must say that I got most of this from newspaper readings and trade press readings myself, since I am not personally familiar with, and haven't worked with, individual carrier tariffs.

Mr. Roberson: Just a minute. Your Honor, I object this. I think we are going further afield. The inquiry in this case is not whether there is some other supplementary way to attack or ameliorate the no-show problem.

The question is whether or not the board has banned it, and the board has not banned it.

So the fact that they let Eastern Airlines experiment for a short time on some kind of conditional reservation would have no probative value in this case.

The court, in other words, with all due deference, the court would not sit here and say, well, although the CAB says that you can have overbooking, this court decides that, because you can have some conditional reservation system which would have some effect on no-shows, therefore, anybody that doesn't have the conditional reservation system is violating the law, and I am going to award a lot of damages because this airline or that airline has not done it.

[143] That is the very point of primary jurisdiction. And the fact that there are other approaches or supplemental approaches, which is what conditional reservation was, is therefore, irrelevant in this case.

Because here the evidence is undisputed that the CAB has not banned overbooking, the airlines' overbooking practices.

They, instead, opted for requiring the airlines to tender deferred-boarding compensation to any oversold passenger. They have not said, "You must never oversell."

They have said, "If you do, you must tender them this denied-boarding compensation, and you must advise them of their rights at the time about denied-boarding compensation, and you must file a list of your oversales every month with the board."

But they have not said, "You can't do any overselling." And, therefore, I think we are chasing down a side track when we are looking into whether or not there are some other things that would help with respect to the oversale problem.

The Court: What do you say to that?

Mr. Robertson: Well, Your Honor, we are investigating what the CAB has done, I think, precisely, and that is what I am trying to ask this witness.

Furthermore, as I understand the contention of the defendant Allegheny, it is that they concede that the CAB has [144] urged the carriers to do everything feasible, everything in their power, to eliminate overbooking.

I think that is in the opinion that has been introduced into the record here, and I think that is just what I am trying to explore with this witness.

The Court: How long will this take?

Mr. Robertson: Another five minutes on this, Your Honor. This is a very important point, though, what options are available and what options are now available to the carrier and whether this is really an economic necessity or whether it is something less desirable.

The Court: All right. Well, I am inclined to agree with Mr. Roberson, but I will try to keep an open mind and give it such weight as the court feels it is entitled to receive, in view of the issues in the case and in view of the fact that the court is sitting without a jury.

Mr. Robertson: Well, I understand, Your Honor, that the defendant is arguing that this practice of selling more seats than they have available on a flight is an economic necessity, and I intend to show that it is not.

The Court: All right. You may proceed.

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[145] By Mr. Robertson:

Q. It is a fact, is it not, that least three other carriers besides Eastern have now instituted the conditional reservation tariff? A. I do not know.

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Q. Do you know, or are you aware of the fact that the conditional reservation has now been extended for an additional two years until 1975? A. I do not.

Q. You did not know that? A. No.

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[150] By Mr. Robertson:

Q. In what respect is overselling flights an economic necessity for an airline? A. May I have the question read back?

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The Witness: Well, overselling flights is not an economic necessity. You used the word "overselling" and not "overbooking". I assume you are using that distinction intentionally.

By Mr. Robertson:

[151] Q. I am not aware of a distinction. A. Well, an overbooking relates to the practice in the reservation system of placing—of accepting more reservations than you have seats in inventory.

But if the system works at all, there are very few, if any, oversales.

Now, your question related to oversales and not to overbooking.

The reason there are no oversales, as distinguished from overbooking, is because the overbooking process takes into consideration the fact, No. 1, that, unfortunately, many members of the public make multiple reservations, having the intention of using only one of several reservations, and not bothering to cancel the others.

No. 2, some cancellations come at the last hour, and no more requests for reservations or few would come during that period. But if you had turned away previous requests, you would have no manner of retrieving them.

So, ideally, overbooking should result in very few. In relation to the universe that you are working with, very few oversales.

And your question was related to oversales.

Oversales, itself, is not an economic necessity. Oversales is an economic detriment. It is unfortunate when it happens,

and I am sure the carriers feel that way, too. Because the [152] carriers are penalized, and penalized severely, for that oversale to the tune of 100 per cent of the face amount of the ticket, in addition the value of the ticket.

If the carriers intentionally engage in overselling, they would go bankrupt very shortly by the simple laws of economics, sir.

Q. So, in other words, the amount of overbooking that occurs is much greater than the amount of oversales that result? A. My goodness, yes.

Q. So that in a given period of time, if they oversell a quarter of a million people, in that same given period of time they might have overbooked four or five times as many, is that right? A. Yes. And that is the whole justification for overbooking, because you—

The Court: What is the difference again between an "oversale" and an "overbooking"?

The Witness: Your Honor, overbooking is a statistical exercise in which you accept reservations. Let us say you have 100 seats. Now, you may realize on the basis of your past experience that in this particular market, if you have 100 reservations, only 70 of those passengers will show up. I am giving you a typical example.

The Court: Yes.

The Witness: Well, in that case you would overbook [153] that flight by perhaps 25 seats to take into account the fact that 30 of those reservations are bad reservations from the public's point of view. They are not going to show up for the flight, and they are not going to bother to cancel the flight, or cancel the reservation.

The reason you do that, No. 1, is economically for yourself; but, more importantly, from the board's standpoint, when I was there at least, we took into consideration the fact you are accommodating these 25 people, to whom, if you did not overbook, you would just say, "No, I am sorry. We are full. You cannot make a reservation."

They would sit home, and your plane would take off with 25 or 30 empty seats.

That is really, from the Civil Aeronautics standpoint, one of the primary justification for overbooking. It is an accommodation of the public because of the careless habits of other members of the public in holding seats which they will not use.

But the oversale occurs in that unfortunate case where either your statistical analysis is in error, but even by the law of average sometimes things are a little higher and sometimes things are lower.

There may be one or two passengers for particular flights in rare instances who exceed the capacity of the airplane, and that is when you have an oversale: when you must deny a [154] passenger with a confirmed reservation a seat on the aircraft.

The Court: If I have learned anything from this case, I have learned that if you have to be at a meeting or have to be at any one point or place in the country or the world, where the airline is under the jurisdiction of the CAB, you had better jolly well take a week in advance to get there, to make sure you are going to make it.

The Witness: I am sorry, but I can't agree with you, Your Honor.

The Court: The remedy, it seems to me, if it is overbooked or oversold, is set forth in the tariff, according to your testimony.

The Witness: Yes, sir.

The Court: And that may be a wholly inadequate remedy.

The Witness: Well, the fact is that such a small percentage—

The Court: That does not go to the problem of the importance of an individual being a certain place in point of time.

Suppose I have to give a speech, as I do, in Ohio at the end of this week and I do not get there because of overbooking. The fact that the tariff provides me with a remedy

of $25 plus 100 per cent of the face value of the ticket, or whatever it is, is not going to compensate me for my lack of presence [155] at this meeting, or a number of others that I have to go to next month.

The Witness: But if that particular carrier had not engaged in overbooking, they may not have given you a reservation in the first place. You might have stayed at home, Your Honor.

The Court: That is not in accord with what the Civil Aeronautics Board approves as a matter of policy. They can still overbook.

My ticket, which I have for all three of these trips, still may not be worth a darn when I get to the airport and present them.

The Witness: I would suggest, Your Honor, that if you are there within a reasonable time before flight departure, you would be accommodated.

In most cases the way—

The Court: Well, the implication is left from the testimony that I have heard today that if you get there a half hour before flight time—that is what the airlines normally tell you, is it not?

The Witness: Well, we would like you to get there half an hour before flight time.

The Court: Okay. That is what they tell us, as I recall it.

Mr. Robertson: There is no requirement in Allegheny's [156] case for that.

The Court: All right, but generally speaking, they do tell you that.

Mr. Robertson: Just arrive there before the flight leaves.

The Witness: Particularly because you have to go through certain security checks now with respect to luggage, et cetera.

The Court: All right. But that does not mean that my ticket is going to be honored, or that my reservation is going to be honored at all, does it?

The Witness: Well, statistically it means that it will 99.999999—I don't know how far you want to run it out—per cent of the time.

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The Court: I hope so.

By Mr. Robertson:

Q. Is every airline free to file its own tariffs concerning its reservations practices within the parameters set by this denied-boarding rule? A. Yes.

[157] Q. These are not fixed by the CAB? A. That is correct.

Q. And, in fact, when the CAB passed this rule that you have been testifying about, didn't they say that they were going to decline to exercise jurisdiction to govern the reservations practices? A. I don't think they said it quite that explicitly.

Q. But that is what they were doing, isn't it? A. They said they wished to permit each carrier maximum flexibility in setting forth its own priority rules, but I think the board made very clear in that rule that it was going to keep on top of these rules, because it is responsible for unjust discrimination, preference, and prejudice, and within its regulatory function it would be governing the rules in that manner.

Q. Wasn't the upshot of what the board said, though, that it was going to take a hands-off position so far as governing the reservations practices was concerned? A. Not in that broad language. I could not accept that, because the board said it is going to stand over these things and exercise its regulatory functions, if there were any cases of abuse, discrimination, preference, prejudice. That is the whole purpose in requiring them to be filed.

Q. Did the board's opinion direct itself to preempting the jurisdiction of other bodies, such as the courts, to deal with these problems of discrimination? [158] A. The fact that the board regulated in that area, I would say yes.

Q. And has any court held to the contrary? A. The contrary to what?

Q. To your testimony.

The Court: That the board has the sole and exclusive jurisdiction to regulate disputes such as the one we have here.

The Witness: I don't know of any court having held to the contrary. I would be most surprised, in view of the law of primary jurisdiction, if any had.

By Mr. Robertson:

Q. Well, you are an expert on the jurisdiction of the CAB in this issue? A. Yes.

Q. Are you familiar with the Archibald case, Archibald v. Pan American World Airways? A. No, I am not familiar with that particular case.

Q. Since 1971, have the air carriers conducted any meetings among themselves on a periodic basis to deal with this group of problems? A. Not to my knowledge.

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[159] By Mr. Robertson:

Q. Did the CAB in its order, or in its regulations that are now in effect, or have ever been in effect, seek to bar means of judicial redress for denied boarding?

Mr. Roberson: Your Honor, those speak for themselves. They are in evidence, Exhibits D and E.

The Court: Overruled.

The Witness: I think what the board did, in its initial regulation, at least, is set out a means of compensation which the carrier would be required to tender to the passenger as liquidated damages, and which the passenger was free to accept or not.

By Mr. Robertson:

Q. That is right. And didn't the board expressly provide that the remedy is not non-exclusive, and the passenger has option of undertaking litigation to achieve redress?

A. Well, with respect to the question of damages, compensatory damages—

Q. Answer the question I asked, please. A. I can't answer your question that broadly. Assuming that you are attacking the reasonableness of the program, I would have to disagree with you.

What the board did in its penalty provisions or compensation provisions is state:

This should more than adequately cover the damages to an [160] individual for his inconvenience in being oversold. You must, Airline, offer this to the oversold passenger, so that he does not have to bother with litigation.

The individual passenger is free, if he wishes, if his compensatory damages exceed the damages stated in the tariff, to seek his damages by litigation. But that does not encompass the attack on the reasonableness of the board's rule, itself, that is, on the question of—

Q. That is another question, but my question does not reach that. My question is simply:

Does the board's regulation say that passengers are excluded from going to court if they are denied boarding? A. I think I answered that: No, not on the question of damages.

Q. In fact, it contemplates that the passenger has an option? A. To accept the money, or if he thinks his damages were greater than that—

Q. That is right, or to—

The Court: Let the witness finish his answer, Mr. Robertson.

Mr. Robertson: Oh, certainly, Your Honor. I am sorry.

The Witness: If he thinks his damages were greater than that, he can go to court.

[161] By Mr. Robertson:

Q. If the passenger thinks his damages are greater than that provided in the tariff, he can go to court, is that right, sir? A. If his actual damages are greater than the

board has prescribed, he can go to court. That is correct.

The Court: This court, is that correct?

The Witness: Yes, that is my view.

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The Witness: Your Honor, I want my last answer to be clear. He can go to court on a question of damages. I did not mean that he could go to court challenging the reasonableness of what the CAB has done.

The Court: Right.

By Mr. Robertson:

Q. When an airline bumps a passenger because of an oversale, does not the CAB provide that he has 90 days to claim denied-boarding compensation?

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[162] The Witness: I don't know what the rule is today. I recall that the carrier must that very day that the passenger is denied boarding offer him the compensation.

At the time I worked with the rule, the passenger had 30 days in which to accept that voucher and endorse it. That is the time period that I am familiar with. I don't think your question addressed that. I am not familiar with your question.

By Mr. Robertson:

Q. My question did not address whether he has 30 days or 60 days to cash the check. My question is:

Has not the CAB said that the passenger has 90 days in case he is not given the denied-boarding compensation, or whatever he is entitled to after being bumped off a flight, 90 days to make a claim? A. I don't think the CAB—the carriers may have filed something in their tariffs with respect to the time limitation rules, but I am not familiar with that.

Ordinarily, the time limit for an individual bringing an action against an airline for a loss or damage claim is

specific in the carrier's tariffs. So I am not familiar with that provision.

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[165] By Mr. Robertson:

Q. Are you familiar with something known as the *Consumer's Guide* that has been put out by the Civil Aeronautics Board? A. I am aware that such a guide has been put out, and this purports to be a reproduction of that guide.

Q. Very well. Would you turn to page 2, please? A. Yes, sir.

Q. Do you see an item with Caption No. 2? A. Yes.

Q. Would you read the caption there? A. "Denied Boarding Compensation."

Q. And would you read the—in the center of the column, the third paragraph from the bottom under that caption? A. The part that you have marked in blue?

Q. Yes, sir. A. The whole paragraph?

Q. Yes, sir. A. "CAB regulations state that the airline must pay you the money for denied-boarding compensation within 24 hours. If you have not received the payment within that period of time [within the 24-hour period], you have 90 days to file a claim. The airline is required to keep ticket records only three months, and if you delay, you may not get the money due you."

Q. Does that refresh your recollection about what amount [166] of time is provided for making a claim after denied boarding? A. No, it does not.

Mr. Roberson: Your Honor—

The Court: He has already answered.

Mr. Roberson: We tendered him the denied-boarding compensation, so there was no question of the 90 days.

Mr. Robertson: I have no more questions.

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[167] (Defendant's Exhibits A, B, C, F, G, and H received in evidence, respectively.)

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[168] The Court: Do you want this list and the description as part of the record?

Mr. Roberson: I have just submitted that pursuant to Your Honor's pre-trial rule. I don't know what Your Honor wanted with that, but Your Honor specified——

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The Court: All right. It will be received as part of the record in evidence in this case, along with the exhibits, [169] themselves.

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The Court: And so will the plaintiffs' list.

Mr. Robertson: Yes. Your Honor, it is understood, I assume, that the characterizations as to what the evidence shows are purely that of counsel. Those are the contentions made by the parties.

The Court: Obviously.

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[170] Mr. Roberson: Your Honor, Exhibit C is two pages from the Allegheny *Passenger Service Manual.* They are needed in connection with the testimony of the next witness.

The Court: All right.

Mr. Roberson: The first one, Exhibit C, tells what an oversale is. It says: "An oversale is a passenger who holds a confirmed ticket for a flight and who checks in for the flight (this means appearing at our local ticket lift point before the scheduled departure time), but who cannot be accommodated on that flight because of insufficient seats, or seats being blocked. Give every oversold passenger Form SS-112."

On the next page I call Your Honor's attention to paragraph 5, where it says—this is in the procedure for what you do when you have an oversale, priorities—it says:

"If the oversale is not known until the flight is being boarded (this applies particularly where gate check-in is used), the last passenger to arrive at the gate is the oversale and is not permitted to board. Selection is automatic. Do not delay the flight seeking a passenger who would be least inconvenienced."

Those two things have to do with Mr. John McDonald. Would you call him in, please. He is the customer representative who talked with Mr. Nader at the gate.

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[171] **John McDonald**

was called as a witness, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Roberson:

Q. Your name is John McDonald? A. That is correct, sir.

Q. And what is your residence address, sir? A. 8 South Ingram Street, Alexandria, Virginia.

Q. What is your occupation, Mr. McDonald? A. I am a passenger service representative for Allegheny Airlines.

Q. At what airport? A. At Washington National Airport.

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[172] Q. What are the duties of a passenger service representative, just briefly, with Allegheny? A. I would be supervising the ticket counter and gate operations and giving information to all the passengers that travel with us, helping with children, and so forth.

Q. Were you on duty at Washington National Airport on the 28th of April, 1972, when Flight 864 was supposed to depart? A. Yes, I was, sir.

Q. What time was it scheduled to depart? A. 10:15 a.m.

Q. And what time were passengers allowed to start boarding on that flight? A. Approximately 10:05 that morning.

Q. How many passengers were boarded on it? A. 100.

Q. About how long did it take to board that 100 passengers? A. Five to ten minutes.

Q. What time had your gate area opened down there where people could begin checking in, as distinguished from actually getting on the plane? A. Approximately 9:30 a.m.

Q. What did you say the flight capacity was of this particular airplane? A. 100.

[173] Q. And by what time had you fully filled up that plane? A. Approximately 10:15—I am sorry, 10:10.

Q. Did anything out of the ordinary occur immediately thereafter, after the flight was fully boarded? A. Yes. We had passengers with confirmed tickets at the boarding area after we boarded 100 people.

Q. All right. Then, after you boarded 100 people, did anyone else show up? A. Yes, sir.

Q. Did you, afterwards, learn the name of the passenger that first showed up, after you had boarded 100 people? A. I believe it was a Mr. Koskinen.

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Q. Was there also another young man that arrived at or about the time of Mr. Koskinen that had to be denied boarding, also? A. Yes, there was.

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[174] Q. You did fill out a passenger denied-boarding slip with respect to the passengers that were denied boarding, did you not? A. Yes, I did.

Q. And that would give his name? A. Yes, it would.

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Q. What are you required to do when you have an oversale, that is, when somebody shows up after the flight is

already fully boarded with confirmed passengers? A. My primary objective would be to advise the passenger of the situation and find another means of transportation to get him up there as soon as possible.

Q. Do you have to make out any report forms for your [175] organization? A. Yes, there is a standardized form used when a passenger is denied boarding.

Q. Did you start filling out those forms for Mr. Koskinen and the other man? A. Immediately.

Q. Did you complete those before a third person came up? A. I completed the first, and I was half way through the second form.

Q. And what occurred then? A. Then Mr. Nader came up, running down the hallway.

Q. You say he was running. Do you know that he was running, or was he walking? A. Yes, he was running.

Q. Did you see him, or how do you know that? A. I caught a glimpse of him coming down the hallway through one of our windows.

Q. What time was it when he arrived at the ticket lift position? A. At least 10:15.

Q. Is that where you were working? A. I was there at that time, yes, sir.

Q. At what desk were you working in connection with filling out these denied-boarding reports? A. There were two check-in positions available at the [176] gate, and as soon as the denied boarding occurred, I moved over to the right-hand side in order to let the agent complete her writing, her paper work.

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Q. Did you do anything in connection with Mr. Pulzun and Mr. Koskinen with respect to seeing whether the people who had been boarded were properly boarded, or whether you could take somebody off, and they would go? A. I looked through the tickets, and I made sure that there wasn't any stand-by or white-listed passengers boarded.

The Court: That is, who had previously been boarded prior to the time you were looking?

The Witness: Correct, sir.

The Court: And was that situation prior to 10:10 on this particular day in question?

The Witness: Approximately 10:10.

The Court: All right.

By Mr. Roberson:

Q. Then, when Mr. Nader came up, did he, too, have a confirmed ticket, an okayed ticket? A. Yes, he did.

[177] Q. What did you do with respect to Mr. Nader? A. I advised him of the situation: that he would be denied boarding.

Q. What is a tare and balance sheet, a weight and tare sheet? A. A weight and balance tare sheet is what we call it.

Q. All right. A. It is a standardized form used to show the weight of the passengers, fuel, cargo, and where it is all located on board the aircraft.

Q. Does it have anything to do with the safety of the aircraft? A. Yes, it does.

Q. What is the connection? A. To make sure that the flight is not overweight or unbalanced.

Q. When is it sent out to the plane? A. Just before departure time.

Q. Had you sent that out by the time Mr. Nader arrived? A. Yes, that was already on its way out to the airplane, sir.

Q. And did you offer these gentlemen alternate transportation? A. Yes, I did.

Q. What did you propose in that connection? [178] A. We had a flight going from Washington to Philadelphia in the next 15 minutes, and I could offer a connection in Philadelphia arriving in Hartford, Connecticut, fifty-five minutes after the scheduled arrival time.

Q. Did you offer that to these three men? A. Yes, I did.

Q. Did any of them accept it? A. At first all three accepted.

Q. And then what happened? A. Mr. Nader made a few telephone calls and came back and said he would accept that. I advised him to meet me at Gate 16, where the rest of the paper work could be finished, and he did come down, after making a telephone call. He came to Gate 16.

I advised him he would have to take a bus out to the airplane.

Q. And then what did Mr. Nader say to that? A. He asked me what type of aircraft it was.

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Q. And what did you tell him? A. I advised him it was a Beech 80.

Q. And what is a Beech 80 plane? A. It is a commuter aircraft, twin-engine turboprop.

[179] Q. It carrier how many passengers? A. Fifteen people.

Q. What, if anything, did Mr. Nader say or do when you told him that this commuter aircraft was a Beech 80? A. He said, "Cancel it."

Q. And—— A. At that time he started down the hallway.

Q. Did you tender Mr. Nader this form that the airlines are supposed to tender about the rights to denied-boarding compensation in the event of an oversale? A. Yes, sir, I did.

Q. Tell us about that. A. I gave him the form, as soon as he got to the gate, and I advised him of the denied boarding. He said, "That is all right. I already have one."

I still said, "You have to accept mine. You do not have to read it, but you have to take it."

Q. Did he tell you from what airline he had already had one of those denied-boarding compensation rights cards? A. Yes, he said American Airlines.

Q. Did he take the one from you? A. Yes, he did.

Q. What did he do with it? A. He put it in his pocket, his coat pocket.

[180] Now, did Mr. Nader question you about whether or not the commuter flight would be able to make the connection to Philadelphia and get him to Hartford 55 minutes after the original flight, or did he cancel it after you made the statement about the commuter aircraft? A. So far as I remember, all he did say was, "Cancel it."

Q. Before that, had you already explained about the schedule in Philadelphia, the connection schedule? A. Yes, I did.

The Court: Well, the implication of your testimony up to this point is that, until the last question, when Mr. Nader was asked to meet you at Gate 16, he, in effect accepted your proposition or offer to fly to Philadelphia and thence to Hartford.

The Witness: That is correct, sir.

The Court: And he offered no objection to flying to Philadelphia via this Beech 80 aircraft.

The Witness: I am sorry. Would you repeat that?

The Court: And he offered no objection to flying via the Beech 80 aircraft.

The Witness: That is when he objected.

The Court: When?

The Witness: When he found out it would be a Beech 80.

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[181] What time was this connecting flight scheduled to arrive in Hartford, Connecticut? A. I think it was 12:10.

Q. Did Mr. Nader ask you, in substance, after you had told him the plane was full, did he ask you to see if anybody would volunteer to get off the plane and give up their seat for him? A. Yes, he did.

Q. Did you agree to do that? A. No, I didn't.

Q. Why not? A. The flight was already boarded and ready to go, and [182] the selection is automatic once we have 100 people on board.

Q. You are referring now to your *Passenger Service Manual,* Mr. McDonald? A. Yes, sir.

Q. And that says that the last person to arrive is the oversale? A. Yes, sir.

Q. Are you permitted under that policy to delay the flight, trying to find out who would be least convenienced or inconvenienced? A. No, I am not permitted to do that.

Q. Did you say anything to Mr. Nader about—after he had decided not to make the flight, about being able to pick up the deferred-boarding compensation at the ticket counter, if he wanted it? A. Yes, I did, sir.

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Cross-Examination

By Mr. Robertson:

Q. Mr. McDonald, what time, according to your testimony, did the two other denied-boarding passengers arrive at the gate, Mr. Koskinen and Mr. Pulzun? A. Approximately 10:10.

Q. Not 10:12? [183] A. Approximately somewhere in that area?

Q. 10:10? A. 10:10, 10:12.

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[184] Q. Is it true that your recollection was that the two passengers arrived at about 10:05 or 10:10, when the gate agent, the other agent at the gate, advised you that there were two extra passengers? A. I am not sure of the exact time, but that did happen.

Q. So you are not sure of the exact time? A. Not to the second, no.

Q. Or to the five minutes? A. I could not be perfectly sure, no.

Q. Actually, Mr. Koskinen did arrive at the gate about 10:05, didn't he? A. Approximately.

Q. And Mr. Pulzun actually arrived at that gate about 45 minutes to an hour ahead of time, didn't he? A. That is possible.

Q. In fact, wasn't Pulzun one of the first ten or 11 people who checked in? A. I don't know.

Q. Well, wasn't Pulzun actually allowed on the aircraft and then put back off? [185] A. No, sir.

Q. You did not go out to the plane and make him get off? A. I did not.

Q. And you do not know if anyone did? A. Nobody did.

Q. Are you aware that the company has gotten a statement from Mr. Pulzun giving this account? A. No, I am not.

Q. If he gave such a statement, would that be false? A. I would believe it to be false.

Mr. Roberson: May it please the court, I don't think he ought to characterize what some other witness has given in some self-serving statement.

The Court: Well, ask him whether it was the truth or not.

By Mr. Robertson:

Q. Was it the truth? A. To my knowledge, it was not.

Q. Are you still sure that Pulzun and Koskinen, as you just testified, arrived about 10:10 to 10:12? A. At the check-in position, yes.

Q. I thought you said that Pulzun may have arrived, it was possible that he arrived, 45 minutes early? A. That is possible.

Q. What time did Mr. Nader arrive? [186] A. Approximately 10:15.

Q. You seem very exact about that? A. Yes, sir.

Q. How can you recall that so precisely? A. Because it was right at the departure time. I try to be aware of the time

Q. What was the scheduled departure time? A. 10:15.

Q. What time did the flight actually depart? A. Approximately 10:25.

Q. 10:25? A. That is correct.

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[188] Q. Well, this document shows that the plane departed on schedule at 10:15, is that correct?

Mr. Roberson: Well, I don't think he ought to paraphrase the interrogatory answer. I don't remember what it was,

what they did say. But if he is going to quote from it, I think he ought to quote the answer to the interrogatory. It may have said that. I don't know.

Mr. Robertson: Your Honor, I read Question No. 25(g), requesting, with respect to Allegheny Flight 864, on April 28, 1972, from Washington to Hartford, "the time at which Flight 864 departed from the gate at Washington National Airport."

The answer, as given: "Flight 864 reported 10:15 a.m. departure."

Mr. Roberson: Well, that is not the same thing as he was trying to paraphrase, Your Honor. They may have been two minutes off in that, but they reported as 10:15 departure. Now, whether that is a fact or not, as to actual departure, that may have been different.

But he was trying to paraphrase it.

The Court: Well, I will read the interrogatory, and the answer, and consider it in the light of all of the other evidence.

By Mr. Robertson:

[189] Q. Mr. McDonald, isn't it possible, based on that record, that your watch might have been in error? A. I don't believe so.

Q. You do not believe it is possible? A. That is correct.

Q. Has it ever been wrong? A. Of course, it has.

Q. Why would it be impossible for it to have been off at this point? A. Because I had just checked it with our operations office approximately 15 minutes before that.

Q. Well, since your recollection is not exact about the time that Mr. Koskinen and Mr. Pulzun might have arrived, and since your recollection disagrees with company records as to the time the plane left by five or ten minutes, might you not also be mistaken about the time that Mr. Nader got to the gate? A. I don't believe so.

Q. You do not believe it is possible? A. No, sir.

Q. Actually, if he had arrived at ten-fifteen-and-a-half or after the scheduled departure of the plane, he would not have been an oversale, would he? A. Technically, not.

Q. He would not have been eligible for denied-boarding compensation in that case, would he? [190] A. I think—I am sure I still would have taken him as a denied-boarding passenger.

Q. Well, under Allegheny's tariffs and rules you cannot just give away the company's money to someone who is not eligible for it, can you? A. I held this belief because I am sure something would have come out of it.

Q. What do you mean, something would have come out of it? A. Just being 15 seconds late or 30 seconds late, one way or the other.

Q. All you do if he is late is tell him, "I am sorry. You are late. The flight is closed." A. I could have said that, yes, sir.

Q. And you would have, if it had been after the departure time of the flight? A. Not necessarily.

Q. Did you have a discussion with Mr. Nader about whether there were any stand-by's on board? A. Yes, he asked me if any stand-by's had been boarded.

Q. What did you tell him? A. No, sir.

Q. Did you make a check? A. Yes, I did.

Q. Did you have a discussion with him about making an announcement on the flight to see whether anybody might volunteer [191] to take a later flight, so that the crowd would not be disappointed? A. He asked me if I would make a speech so he could get on the flight.

Q. He asked you if you would make an announcement? A. That is correct.

Q. What did you say? A. I said no.

Q. You were aware that there was some urgency in his being on that flight at this point? A. Not really, sir.

Q. You were not aware that there was any urgency? A. No, sir, not at that point.

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Q. Do you recall having your deposition taken and giving testimony under oath on July 6, 1973, in this matter? [192] A. Yes, I do.

Q. And do you recall the following question:

"Did you understand from him that there was some urgency about getting there?"

And do you recall giving the following answer:

"I did. I did." A. That was after he asked me to see if somebody else would get off the airplane.

Q. Isn't it true that Mr. Nader got to the gate in more than ample time to make the flight, and if the flight had not been overbooked, he would have been put on it? A. No, sir.

Q. It is not true? A. It is not true.

Q. And your testimony is that the flight did not leave until 10:25? A. Exactly.

Q. That gave him ten minutes? A. I am saying if the flight were leaving as scheduled he would not have gotten on.

Q. I am asking you: Isin't it true that if he had gotten there that day, based upon when he did get there that day, if the flight had not been overbooked, he would have been accommodated? A. It is possible.

Q. It is true, isn't it? [193] A. It could have gone either way depending on how fast the computer was sending out the weight and balance tare sheet.

Q. Why did you refuse to check whether any passengers might help out the situation, considering the circumstances, the fact that the problem had been induced by overbooking? A. By my *Passenger Service Manual,* or Allegheny's manual, it is automatic. I am not to delay the flight any further, looking for somebody who may possibly be lesser inconvenienced.

Q. Well, how long would it have taken? A. Not very long.

Q. Not more than 30 or 40 seconds, would it? A. I am not sure.

Q. Well, you are pretty sure, are you not? A. Considering the airplane was about 100 yards away from the gate where I was.

Q. Well, would it have taken you 20 seconds or 30 seconds to walk to the airplane? A. I would say for the total time

of going out and making an announcement it would be one minute.

Q. One minute, now? A. Right.

Q. All right. A. And also coming back into the lounge.

Q. I am referring again to your deposition, on page 64. Do you recall being asked the question: "And how long would it [194] have taken to do this," referring to making the announcement and asking for a volunteer, and your answer: "I am not sure. It would all depend on how easy or how hard it would be for somebody to get up.

"Queston: Well, for example, would it have taken you 30 seconds to walk to the plane?

"Answer: Approximately.

"Question: And another 20 seconds to make the announcement?

"Answer: Not even that, 10 seconds."

Do you recall that testimony? A. Yes, I do.

Mr. Roberson: May it please the court, he ought to finish reading from that, because he stops——

The Court: Read the full question and the full answer, and then ask him if those questions were asked and those answers given.

Mr. Robertson: Well, Your Honor, the rest of it relates to an objection that was raised by Mr. Roberson.

Mr. Roberson: No, it does not.

You asked a question. I made an objection. Then the witness made an answer, and I think it is all pertinent to this about how long it would take to——

Mr. Robertson: Very well, Your Honor.

The Court: I just got done reading it, but the witness has not heard it, so you had better ask him.

[195] Mr. Robertson: The question that I put to the witness originally had to do with how long it would take to make an annoucement.

The next question that we get into is, if someone accepted, it might take another three or four minutes to get them off the plane.

An objection was interposed by Mr. Roberson. "How about getting their baggage out of the hold?

And I respond, "That is true."

And the answer of the witness: "That would be impossible. I would not even try it. There are 200 pieces of luggage in there."

By Mr. Robertson:

Q. Do you recall that testimony? A. Yes, I do.

Q. So your prior testimony was that it might take you 30 seconds to make the entire trip out to the plane and make the announcement, is that right? A. And another 30 seconds or so to get back inside the lounge?

Q. Yes. A. Right.

Q. Another 30 seconds? A. Right.

Q. So you are counting roundtrip, sir? [196] A. Correct.

Q. Now, it would not be necessary to take the baggage off of the plane if someone wanted to volunteer, would it? A. By company manual, it would. We are not allowed to separate a passenger from his baggage.

Q. Well, suppose someone has checked in for a flight and, as the result of an oversale, it develops that they are overbooked and don't board it, and their baggage has already been put on the plane. The baggage is going to go, is it not, Mr. McDonald? A. We will ask the passenger whether he wants his baggage back or not.

Q. But you know it frequently goes ahead to the destination, does it not? A. Most likely because we can get the passenger there very quickly.

Q. So, all that would have been required was to tell whoever might volunteer that, "Your baggage will be waiting for you in Hartford when you get there"? A. Yes.

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[197] Mr. Robertson: I am through with that line, Your Honor.

The Court: All right.

The Court: All right. I will overrule the objection and give it such weight as the court feels it is entitled to.

By Mr. Robertson:

Q. Now, what is a "PNL" or a passenger name list? A. A "PNL" is a passenger name list.

Q. Well, what is that? A. It is a computerized listing of the names of the passengers holding confirmed space on a flight.

Q. This is used as a check-in tool, is it not? A. Not necessarily.

Q. It is not used as a check-in tool? A. It does not have to be.

Q. But it is used as a check-in tool? A. It is at times used as a check-in tool.

Q. For the gate, right? A. Correct?

Q. But usually it is not used, is that correct? A. It depends on the time of day and which flight and how many agents are involved in boarding a flight.

[198] Q. So it is a tool that is often overlooked if there is a press of passengers? A. It is not overlooked. The PNL will be there. It may not be used to mark off every passenger's name as he checks in right then and there, but they will have to use that eventually, sir.

Q. And this list of confirmed reservations is accurate up to the time it is printed out and taken up to the gate, is that right? A. That is correct.

Q. Now, the PNL was not used to check in Flight 864, was it? A. It was there.

Q. It was there, but it was not referred to or used as a check-in tool, was it? A. I don't remember.

Q. You do not remember? A. Correct.

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Q. Now, if over 100 persons were holding reservations for Flight 864, this would show up on the PNL, would it not? A. Yes, sir.

[199] Q. What is a "PBI"? Do you know what that is?

A. Yes, sir. It is a Passenger Boarding Information read-out or print-out from a computer.

Q. And what does this information provide? A. It will give the information of all the passengers holding space on the flight that have not been ticketed, plus passengers that need assistance, plus the in-bound connections from both Allegheny and other airlines.

Q. Well, it does give you that total number of passengers who were booked out of your station, does it not? A. Yes, it would.

Q. It also gives the status of the space out of each station; in other words, if a flight is overbooked out of a particular airport, it would show "OB," would it not? A. Yes, it would.

Q. So doesn't this provide you with a tool to find out in advance whether a flight is overbooked or not? A. Yes, it does.

Q. And isn't this information made available to Allegheny at the gates? A. It has to be picked up by the agent who is working the flight, or that agent will ask for somebody to get one. It is not a required piece of material used for each flight.

Q. But it is available, is it not? A. It is available.

[200] Q. And there are other tools available of the same nature, such as the PMB, right A. That is correct.

Q. Therefore, isn't it true that if a flight is heavily overbooked, the information is in the computer and it is available to the agents at the gate? A. What do you mean by "heavily overbooked"?

Q. Well, if a flight will hold 100 passengers and there are 107 or 108 booked with confirmed reservations on the flight, this information is in the computer, and it is available to the agents at the gate, is that right? A. That is right.

Q. Are they not supposed to know in advance the status of the flight? A. Not necessarily. If an agent works 15 or 20 flights a day, it is hard to keep up with each flight.

Q. So, as a matter of course, sometimes it is just not done? A. Which one are you speaking about now?

The Court: What is not done?

By Mr. Robertson:

Q. That the agents sometimes do not ascertain what the status of the flight is, in advance of the flight? A. They will usually know how many people are booked, but there are a number of ways of doing it.

[201] Q. Now, how was 864 actually checked in and boarded on this date? A. In what way, sir.

Q. Well, what happened when a passenger presented himself to board the flight? A. At 9:30, the agent made a check-in announcement and started taking tickets and stamping boarding envelopes for all the passengers.

Q. All right. A. That started about 9:30.

Q. And where were the passengers told to go? A. To have a seat inside the lounge or in the Gate 17 area.

Q. And the stand-by's were put in the same area? A. That is correct.

Q. Then the door was opened to the airplane and everyone was sent out at once at that time to board? A. All but the stand-by's.

Q. How were they segregated? A. They were advised at the boarding announcement to remain seated until their names were called.

Q. So if more than 100——

The Court: Pardon me, sir. May I interrupt?

Mr. Robertson: Of course, Your Honor.

The Court: I may have missed something that is very [202] significant today.

I understood you to say earlier, sir, that all the people that were on board the ship, Flight 864, by the time Mr. Koskinen and Mr. Pulzun and Mr. Nader arrived, had confirmed reservations.

The Witness: That is correct.

The Court: Well, now, from the answer to the question he just asked, I gather that that may not have been true, and that some of these people were stand-by's that got on this plane.

The Witness: No. When we check in the passengers, the stand-by passengers, we hold on to their tickets at the check-in desk.

The Court: Certainly.

The Witness: And, as the passengers are going out the door, all the boarding envelopes are checked.

The Court: you mean, once a stand-by gets on, he becomes a confirmed reservation, the same as somebody who called up six weeks in advance?

The Witness: Not for this particular flight, no, sir.

The Court: Were there any stand-by's on this Flight 864?

The Witness: No, sir.

The Court: Okay.

Mr. Robertson: Your Honor, if I may refer you to one of plaintiffs' exhibits that has been admitted into evidence, [203] Plaintiffs' Exhibit No. 5—I refer specifically to the first paragraph—I think you will see a company record that demonstrates the true answer to your question about whether any stand-by's were boarded on the flight.

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Q. According to the company's records, there was at least one stand-by boarded on the flight?

Mr. Roberson: Well, then, I submit it is immaterial. It would take at least three to get to Mr. Nader. He was the third oversale, and if there were a stand-by on there that shouldn't have been on there, then Mr. Koskinen was entitled to it, or Mr. Pulzun. It was not Mr. Nader. They could not skip them, Your Honor.

So unless there were three on there, this is immaterial, and I don't think counsel is going to make any tender that there were three.

The Court: Well, you are a little bit late in objecting, Mr. Roberson.

Mr. Roberson: I make an objection to the relevancy. If there were a single stand-by, we are wasting time with this

witness, because it would take at least three for it to make any difference in the outcome of this law suit.

[204] The Court: All right. You ought to look at that exhibit, Mr. Roberson.

Mr. Roberson: I have looked at it, and I still say it does not make any difference.

The Court: All right. Next question.

By Mr. Robertson:

Q. Well, now, you could have lifted more than 100 tickets marked "Confirmed" at the time the flight was being checked in, is that right? A. That is possible.

Q. Yes. And in that case more than 100 people might then have walked out to the airplane when the gate was opened, right? A. That is possible.

Q. And in that case somebody would have had to be sent back, right. A. Yes, sir.

Q. The person sent back would be the guy, very likely, who the least effective in shouldering his way on to the aircraft, rather than the guy who was last in checking in for the flight, is that right? A. That would be possible. Also, at the same time, we try to keep a record of who was last to check in, in case that does happen.

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[206] Q. Now, was the reservations list or the PNL or any of these tools actually used to see if passengers really had reservations for the flight when they presented themselves? A. Yes, it was.

Q. It was? A. That is correct.

Q. And you ascertained, based on that, that all of these passengers had an actual reservation for the flight? A. All of these passengers had okayed tickets showing [207] that they were confirmed.

Q. Right. That is not my—— A. Except for one passenger who had an open ticket.

Q. And which passenger what that? A. I don't know. I am pretty sure it was a group of four, or a family, and

the agent working the flight checked with the PNL, and the name was there.

Q. My question was not whether you looked at the ticket to see if it were in an okayed status, but whether you actually referred to the reservations list or the weight list to see whether a person had a valid reservation? A. In this case she referred to the PNL, and the name was there.

Q. How do you know that? A. I asked her.

Q. When did you ask her? A. Not too long ago.

Q. So it was after your deposition was taken, is that correct? A. Right.

Q. Now, how are passengers supposed to be selected for denied boarding? A. At Washington the selection is automatic.

Q. At Washington the selection is automatic? A. Any area where there is gate check-in.

[208] Q. Well, the manual that I assume you are referring to really says that where the oversale is not known in advance, isn't that correct? A. That is correct.

Q. But here you knew in advance, or you could have known in advance? A. I didn't know in advance.

Q. And no one could have known in advance this flight was oversold? A. They could have, but nobody advised me of it.

Q. The company knew, didn't they? A. Not necessarily.

Q. Not necessarily? It was in their computer records, was it not? A. This is true.

Q. But you did not use the procedures that are applicable where the oversale is known is advance? A. It is physically impossible.

Q. You did not use them, did you? A. At that time?

Q. Right. A. I was very busy that morning.

Q. All right, but you did not use them, did you? A. I did not use the check-in tool?

Q. Excuse me. You did not use the procedures set forth [209] in the manual for cases where a flight is known to be oversold in advance? A. That is correct, because I did not know the flight was overbooked.

Q. But by checking with any of the status tools, with any of the check-in tools, you could have seen the flight was overbooked, couldn't you A. That is correct.

Q. Do you ever use these procedures for denying boarding and selecting passengers where the flight is known to be oversold in advance? A. Yes, I have.

Mr. Roberson: Now, just a minute. Your Honor, counsel is using "overbooked" and "oversale" as if they are the same thing, and I think that is confusing and tricks the witness. He could not know that there was an oversale until the 101st passenger showed up.

He could know it was overbooked, but he is slipping that "oversale" in when he should be saying "overbooked."

The Court: Well——

Mr. Roberson: I think it is important, Your Honor.

The Court: I think the witness is an expert witness in the nomenclature of the trade. I doubt if he has been tricked here.

Mr. Roberson: I think that Mr. Robertson knows the [210] difference between those, and I think he ought to be precise in his questions.

The Court: Well, I would agree. Counsel, if you can, limit your questions to one of the two subject matters, when you ask the witness a question.

By Mr. Robertson:

Q. How are you instructed to handle the oversold passengers? A. I don't understand your question.

Q. Well, what are your instructions for handling an oversold passenger? A. Via the manual

Q. Whatever instructions you have. A. First of all, to keep the passenger calm.

Q. To keep the passenger calm? A. Right. Very often passengers will get quite upset. And then to listen to the passenger, of course, if he has anything to say, and then advise him what I can do to get him to his destination as soon as possible.

Q. Are you instructed to advise him the reasons why he has been denied boarding? A. I am not sure if the manual states that or not.

Q. I would like to show you an exhibit, Mr. McDonald, Plaintiffs' Exhibit 6. That is the manual used by Allegheny's passenger service agents, including yourself? [211] A. That is correct.

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[212] Are you instructed to advise the passengers what happened and the reason for the oversale? A. I don't think so.

Q. All right. A. I could not give you verbatim on that. You have a copy of the manual there. That is a year old now, and it is changed quite often.

Q. Are you advised to tell the passenger that an intentional overbooking may have caused his oversale? A. I usually would advise the passenger that there has been a mistake; exactly what it is, I don't know, unless, of course, it is an equipment substitution, or something like that.

Q. You would not advise him that an intentional overbooking policy may have caused his distress? A. No, I don't think I would.

Q. And that is because you do not think it is good publicity for the company, do you? A. That is true.

The Court: Is that the reason you did not do it in this instance?

The Witness: I was not sure of the reason for it at that time.

[213] By Mr. Robertson:

Q. Well, you did mark on the forms and the report that you filed the reason for the oversale being overbooking, did you not? A. Yes, I did. That was the most obvious reason, but I still was not sure.

Q. Now, this is the last short series of questions. Concerning this trip to Philadelphia with the possible con-

nection to Hartford, was this a legal connection in Philadelphia? A. No. Company-wise, it was not a legal connection.

Q. It was an illegal connection, was it not? A. That is correct.

Q. Was there some risk that the connection might be missed? A. There would have been some risk.

Q. Did you guarantee that it would be made? A. No.

Q. Did you tell him it would be close? A. Yes, I did.

Q. And even if the connection had been made, the second flight was not scheduled to arrive at Bradley Field until almost an hour after the first flight, is that right? A. Approximately 55 minutes.

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[214] Q. All right. And you gave a report in writing about this denial of boarding to someone in the company? A. Just the required denied-boarding form.

Q. You did make a report? A. Yes, I did.

Q. Mr. Nader did not tell you at any time that the type of aircraft that was offered to him had anything to do with his decision, did he? A. No, he did not.

Q. And, in fact, you had informed him of these verious other features and problems with the alternative transportation—— A. I advised him I would have somebody meet him because it would be a close connection.

[215] Q. Was the flight actually held up in Philadelphia for the connecting passengers? A. It did not have to be.

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Redirect Examination

By Mr. Roberson:

Q. Does your company require you to board anyone that has an okayed ticket, everyone that has an okayed ticket for a flight? A. Yes; if the ticket is written correctly, regardless of any other information, the passenger is to be boarded.

Q. If it has an "okay" on the ticket, then you down there board him, is that correct? A. That is correct.

Q. And that was the situation on this flight: that you boarded the first 100? A. That is correct, sir.

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[216] Recross-Examination

By Mr. Robertson:

Q. Is this program of checking in anyone with a confirmed okay showing on their ticket, is this set forth in the tariffs? A. It is in the company policy manual, yes.

Q. Is it in the same section on denied-boarding priorities that we have been taking about? A. I am not sure. I don't think so.

Q. You don't think it is? A. It would be in a different section.

Q. All right. A. There is a general section for passenger check-in.

Q. But the section that is submitted to the CAB concerning denied-boarding procedures, this is not contained in that section? A. I don't know.

Q. Thank you.

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(Witness excused)

The Court: Now, we will return here when, Madam [217] Clerk?

The Clerk: September 10th.

The Court: And you will produce your other witness on that date?

Mr. Robertson: Yes, Your Honor.

Mr. Roberson: Your Honor, I have one witness here from Pittsburg, because I understood Your Honor wanted to finish the case today. So I brought him down from Pittsburg.

He will not take very long.

The Court: How long is not very long?

Mr. Roberson: Maybe counsel will stipulate that he will testify to what I have said at page 7 of my brief, which is only about ten lines. That is on page 7. The witness is John H. Jenkins.

The Court: Wait a minute.

Mr. Roberson: I don't think there is any dispute that that is—about any of that in there.

The Court: All right.

Mr. Roberson: Of course, if we can stipulate to that, it is quicker than having him in here.

The Court: Let me read it.

Have you got that, Mr. Robertson?

Mr. Robertson: Yes.

The Court: Will you stipulate, if he were called, he would so testify?

[218] Mr. Robertson: Yes, I would.

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The Court: All right. The court will be in recess, so far as this case is concerned, until Monday, September 10th, at 2:00 p.m., at which time the further witnesses for either side will be presented that either side wishes to testify.

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Excerpt From Transcript

September 10, 1973

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[8] **John Koskinen**

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Direct Examination

By Mr. Robertson:

Q. State your name and residence for the record, please. A. My name is John Koskinen. My residence is in the District of Columbia.

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[9] Q. In 1972, April, what was your employment? A. I was administrative assistant for Senator Ribicoff of Connecticut.

Q. And your duties in that job? A. As his administrative assistant, I was responsible for the operations of his staff, both in Washington and in Connecticut.

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Q. And on April 28, 1972, do you recall having a confirmed reservation for Allegheny Flight 864 to Hartford from Washington? A. Yes, I did.

Q. Were you ticketed in advance for this flight? A. Yes, I was.

Q. And what exactly happened when you arrived at the gate [10] to check in for this flight? What time was it, first of all? A. I arrived approximately eight to ten minutes in advance of the departure time at the gate with my ticket. There was no one standing in front of me that I can recall. I approached the agent, handed him my ticket. He stated that there was—there was a pause, and then he stated that they had a bit of a problem. He made a call on his receiver and told me—all of this took place in a matter of seconds—that there was not a seat on the plane.

When I asked him how that could be since I had a ticket, he said that they had overbooked.

At that point in time, as I was beginning to explain to him that I had a meeting for the Senator in Connecticut, a voice over my shoulder said, "You think you have a problem." I turned around, and Mr. Nader was right behind me.

Q. And you knew Mr. Nader personally? A. Yes, I had had some dealings with Mr. Nader through Senator Ribicoff.

Q. And how far behind you was he in arriving at the gate? A. In terms of time or distance?

Q. Yes, in terms of time. A. He would have arrived, my estimate would have been, within a minute or two after I had been there.

Q. Did you hear Mr. Nader ask the gate agent anything about who was on the plane? [11] A. The agent then, in response to Mr. Nader saying, "You think you have a problem," and then asking the agent what the problem was, gave him the same story: that they had overbooked the flight, and that he would not have seats on the plane. Mr. Nader then did ask if there were standby's on the plane.

I might note that when I arrived, the lobby area had been emptied, so that there were only, as I can recall, two other people——

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Q. There was some question about standby's on the flight? A. Yes, Mr. Nader did ask whether there were standby's on the plane.

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[12] Q. I would like to know whether you are aware whether Mr. Nader said anything about the urgency of his trip or his mission?

The Court: You may answer.

The Witness: Mr. Nader explained that he had a luncheon speaking engagement to a public gathering in downtown Hartford that it was important for him to make, and that was basically what he stated.

By Mr. Robertson:

Q. Were there any other oversold passengers, in addition to yourself and Mr. Nader, at that time? A. To my recollection, the only other ones that I knew of were the other two gentlemen who were in the waiting area when I arrived. One was a younger man, and the other was a serviceman.

Q. Did you learn when either had arrived at the gate? [13] A. I have no idea how long they had been there.

Q. But they were there in front of you? A. They were there, not even at the gate. They were in the waiting room.

Q. Was any offer made of alternative means of getting to Bradley? A. The agent explained to us that they would try to make alternative arrangements to get us to Hartford as quickly as they could, but they could not get us there within an hour—I think it is an hour—my recollection, anyway, is that he said they could not get us there within an hour of the scheduled arrival time. Therefore, we had the option of being awarded as damages the price of the ticket.

He explained with regard to the alternatives that it would involve a commuter flight from Washington to Philadelphia, and an attempt then to catch a scheduled flight from Philadelphia to Hartford.

Q. Did he say anything about the nature of this connection? A. He pointed out that they would have to rush to make the connection, because we would not have enough time to catch the commuter flight to Philadelphia in time to catch the flight to Hartford. So it was going to be a close question, but that one way or the other, at some point during the day, they would get us to Hartford.

[14] Q. Did he say whether the connection could be assured or not? A. He could not assure us that we would make this particular connection.

Q. Did Mr. Nader respond in any fashion to this suggestion? A. Mr. Nader explained that, not only did he have a scheduled luncheon address, but then he had other appointments later in the day that made it important for him to be able to not miss more than one appointment. He stated his concern was that, if he went to Philadelphia and the connection did not transpire, he not only would miss, or be late to, the downtown meeting in Connecticut, but would miss his later meetings during the day.

Q. You did take the connecting flight, did you not? A. Yes. I called my office and made other arrangements to be met in Hartford. I then took, with the other two gentlemen in the waiting room and other people already on the commuter flight, the commuter flight from Washington to Philadelphia. We were met in Philadelphia, as the plane landed, by an agent—it might have been two agents—from Allegheny, who took us immediately from the commuter flight into the terminal to one of the adjoining gates and put us on a plane that was waiting. It was already filled, and that was apparently the scheduled Allegheny flight from Philadelphia.

[15] We took that plane, and as soon as we got on, the plane took off, and we landed in Hartford.

Q. What did you do when you arrived at Bradley Airport? A. I was met by a gentleman from our Hartford office, who had been scheduled to meet me earlier in the day. I walked off the plane. I had no luggage. I was met by him in a car and driven to our office in downtown Hartford.

Q. What time did you arrive there? A. I arrived there at approximately one o'clock.

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[16] Cross-Examination

By Mr. Roberson:

Q. Mr. Koskinen, the ticket, the man at the ticket gate told you, did he not, that he thought he could get you on this Philadelphia connection that would put you in Hartford 55 minutes after your scheduled arrival, had you taken Flight 864? Didn't he tell you that? A. He did tell us that it was possible, but he did also point out that he was giving us—I don't mean to volunteer, but he was giving us—the option of cancelling the tickets, because they could not guarantee that they would get us there within an hour.

Q. The important thing to me is that he said it was scheduled to arrive, if everything worked out, 55 minutes after Flight 864, itself, was scheduled to arrive; isn't that right, sir? A. I have no specific recollection exactly what the minutes were. My recollection is he said there was a good possibility that we could make it, and that either

way they would get us to Hartford as quickly as they could.

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[17] A. 11:15 was the time.

Q. It is a one-hour flight from Washington to Hartford? A. That is what I meant to say. Having flown it a lot, I knew it was an hour, and not two hours.

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[19]

Anthony John Moffett

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Direct Examination

By Mr. Robertson:

Q. State your name and your residence for the record, please. A. My name is Anthony John Moffett. My residence is RD 2 in Unionville, Connecticut.

Q. Are you also known as Toby Moffett? A. I am.

Q. And your current employment? A. I am the director of the Connecticut Citizen Action Group in Hartford.

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[24] By Mr. Robertson:

Q. Now, does this background and experience give you a basis for evaluating the success or the viability of specific fund-raising strategies?

Mr. Roberson: I object to that. I think that is a matter of opinion.

The Court: I have to agree with that, Mr. Robertson. That objection will be sustained.

By Mr. Robertson:

Q. Now, the Connecticut Citizen Action Group, would you tell me when that was first started? A. Well, the initial fund-raising for that group took place in April of 1971 during Earth Week, as I recall. I was hired in late July, I believe, by Mr. Nader to go up to Connecticut

and start putting the group together after some money had been raised to start it, and put a staff together. It was to serve as a model for the rest of the nation.

Q. After you went up there, did you have responsibilities for fund-raising on a continuing basis? A. Well, yes, I certainly did. I must say that we wanted to create a record that would be worthwhile——

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[27] A. The specific plans that were made for the spring fund-raising——

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The Witness: (Continuing previous answer)—were a combination of events, speeches, in other words; canvassing, and that type of thing, as well as a direct-mail campaign and the sale of buttons and bumper stickers.

By Mr. Robertson:

Q. Did Mr. Nader agree to assist in this? A. Oh, yes.

Q. What, in particular, did he agree to do? A. He agreed to make a swing through Connecticut at least once and give speeches and urge people to raise money. He also agreed to send a letter out to people that we would locate who might be interested, and he would put his name on the letter that would go to them.

Q. Would you tell the court about the rally that was scheduled for April 28th in Hartford? A. The rally was something that was added on to an appearance that Mr. Nader was going to make at the University of [28] Connecticut in Storrs. We had planned on his going to Storrs and then launching fund-raising efforts in New Haven——

Q. Excuse me. That is S-t-o-r-r-s, is it not? A. Yes, that is the home of the University of Connecticut, sir.

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The Witness: And then also going to storefront operations that had been set up in New Haven and Norwalk to address much—well, much smaller crowds than those at the University of Connecticut.

But this is the way we were going to use Nader.

In addition, we were having him make radio tapes that could be used, as well, to try and raise some money.

By Mr. Robertson:

Q. And what about the rally in Hartford? A. Well, the rally was arranged after what we felt was an unjustified action by our Public Utilities Commission. We argue these things in a hearing room, and we have lawyers who go in and argue them. We do not argue them out in the streets, but we felt, and the City of Hartford also felt, that they had unjustly granted an interim rate hike without any public hearings.

So we scheduled the rally because we knew Mr. Nader would be in the area. We did not schedule it until we checked to see if he would be able to address the rally and make a pitch for [29] fund-raising, using that issue as a stepping-off point.

Q. Were any other speakers scheduled to appear at the rally? A. Well, this was the subject of a continuing discussion, and it finally ended up with the Mayor, Mayor Athanson, and City Council President Nicholas Carbone.

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The Court: All right. And did the Mayor and the President of the City Council speak?

The Witness: They spoke. Yes, they did.

The Court: How many people attended the rally?

The Witness: Well, the number of people who actually showed up on Constitution Plaza——

The Court: Yes.

The Witness: (Continuing)—by my estimate, were somewhat in excess of 1000.

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[30] The Court: And the size of the group that appeared there was not affected one way or the other by Mr. Nader's presence, or lack of presence?

The Witness: Very much so, Your Honor. It was affected by his lack of presence.

The Court: Let me ask you this question, sir:

How could it have been affected when they did not know that Mr. Nader was not going to be able to arrive?

The Witness: Well, when I said 1000, the 1000 people who showed up were there before we even were under way with the rally.

I stood up and announced that Mr. Nader was not going to be tehre, and the crowd evaporated, to a large extent. From that point on it was all downhill.

But I think the important thing to remember is this:

The purpose of the rally from our point of view was to raise some money. From the time Mr. Nader—we learned that he could not show up, this purpose was frustrated, because we did not go ahead with the fund-raising.

In other words, we did not have people selling buttons and bumper stickers. We did not have anyone making a pitch for money, because we felt people would have thought, after the big build-up, that we were asking them to come down [31] to this Plaza using Mr. Nader as a drawing card, and then not having him there, and then saying, "Hey, how about giving us some money for this rate case."

So we just decided not to do it, and the crowd was not there to do it with anyway, by the time the rally actually started.

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[32] Q. Let me ask you how you specifically knew what flight—whether you specifically knew what flight Mr. Nader was to arrive on. A. Oh, sure.

Q. And how did you know that? A. Well, I knew it because I, No. 1, had checked with the lady who does his travel, who does his arranging. Secondly, I called the airline, as I have done in several instances, by just calling and saying, "I would like to confirm that Mr. Nader has a reservation on this flight." I just do that to be sure he is booked on a particular flight.

Q. You called the airline and asked whether Mr. Nader had a confirmed reservation? A. That is right.

Q. What did they tell you, when you called? A. They said yes. I had done that before, and this time they said yes, as they always had.

Q. Did you rely on this knowledge that was conveyed to you in making the plans for the rally? A. Well, of course. He was the attraction, and we leafleted very, very heavily. That was the other thing that I may have failed to mention. We leafleted all the insurance [33] companies and other places where you would naturally draw people from for an event of this kind at noontime.

Q. Okay. Were you aware of, or did Allegheny inform you of, their intentional overbooking practice? A. No.

Q. Did you know that this particular flight had been overbooked? A. No.

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Q. But if you had known in advance, were there other things you could have done to save the rally? A. Other things that would have gotten Mr. Nader there?

Q. Yes. A. Yes.

Q. What, specifically? A. Well, the point is, I think, is that I felt there was nothing we could do to save the rally at that time. I assume that we could have gotten another flight, or attempted to get another flight.

[34] Q. An earlier flight? A. An earlier flight, yes.

Q. Or some other means of transportation? A. Yes. Yes.

Q. Would you have done things that way, had you known of the risk? A. Yes.

Q. And then you learned that Mr. Nader was not on the flight. By what means did you learn that? A. By telephone.

Q. And what did you do then? A. Well, I dispatched the person who was then my administrative aide to Boston. Immediately after finding out that he was not going to be on that flight, then a short time after that, a matter of

moments, finding out that he was going to be on a flight to Boston, we sent Mr. Chapman off to fetch him. Then, I began preparing very quickly some remarks to make before the rally was really under way.

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[42] Cross-Examination

By Mr. Roberson:

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[50] Q. When do you say you made the arrangements with Mr. Nader to speak at the rally in Hartford? A. The arrangements were made with Mr. Nader's representative sometime around the end of the week prior to the arrangements for the rally for his appearance at the rally, sometime around the end of the week prior to his appearance.

Q. The rally was scheduled for April 28th. Would "sometime around the end of the week" mean the previous Saturday? [51] A. I think it was probably Thursday or Friday. That is my recollection.

Q. Now, you remember having your deposition taken in this case in November of 1972, and being asked questions when you were under oath about this case? A. Oh, yes.

Mr. Roberson: Page 6, Your Honor.

The Court: All right.

By Mr. Roberson:

Q. "Question: Do you have any documentation that would make you positive as to when that was done?" This is talking about your call to Mr. Nader's representative. A. Yes.

Q. "Answer: No, I don't. I do know that it was late in the week, prior, probably a Saturday."

That question was asked you, and that is the way you answered it; isn't that so? A. Yes, I suppose.

Q. And when was it that you arranged with the Mayor and the City Council President to speak at this electric

utility protest rally? A. Again, I think it was right after I confirmed that Ralph would be able to do the rally that we began finalizing it with the Mayor, late in that week prior, around the 20th, the 21st.

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[52] Q. If Friday were the 28th and you first learned that Nader said he was going to be able to speak on the previous Saturday, it was after Saturday that you arranged with these people, was it, or had you taken it up with them beforehand? A. Oh, we had taken up with them beforehand the possibility of doing this, certainly.

Q. And you had flyers printed up and distributed by your people advertising this rally, didn't you? A. Yes.

Q. When did you have those mimeographed, or however you had them produced? A. As I recall, again, early in the week of the week that the rally took place.

Q. Was the rally scheduled for 12:15 to start? A. I think we originally talked about noon, and then we thought that maybe we had better give people a chance to get down from Hartford Fire and Aetna and places like that, which is quite a walk.

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[53] Q. Mr. Moffett, would you answer my question? I asked you if you transmitted to Mr. Nader the information that the rally was to start at 12:15. Now, is the answer to that, that you did transmit it, or you did not? A. The answer is I am not sure.

Q. I show you what has been introduced into evidence as Exhibits F and G. Are these copies of the two flyers that your group distributed during the week before the rally? A. Yes.

Q. Both of them call this a ratepayers' rally, do they not? A. Sure.

Q. They do not say it is a fund-raising rally, do they? A. No.

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[55] How long had you planned for this rally to last? A. Roughly, 50 minutes.

Q. And that would have taken it from 12:15, according [56] to those flyers, to five minutes after 1:00, wouldn't it? A. That is right.

Q. So if Mr. Nader had arrived at Hartford on a flight arriving there at 12:15, he would have gotten to Constitution Plaza before the rally was planned to break up, wouldn't he? A. No.

Q. Referring to page 37 of your deposition, did I ask you this question, and did you answer this way:

"Question: Had Mr. Nader arrived at Hartford by 12:15, at the airport, he could have gotten into the Constitution Plaza meeting before it broke up, couldn't he?

"Answer: Well, not much before it broke up. You see, we lost the crowd at that point."

Was that question asked you, and did you answer that way, sir? A. Yes.

Q. And although your rally had been planned to go to 1:05, in fact, it broke up about 12:45, isn't that right? A. That is right.

Q. Now, had you known that Mr. Nader was going to try to make a connecting flight, you could have put that rally in a holding pattern, and Mr. Nader could have spoken at the end of it, could he not? A. No.

Q. Who spoke first at the rally? [57] A. I did.

Q. And you spoke about five minutes? A. Roughly. Maybe a little more. Roughly five minutes.

Q. And when did the Mayor speak; was he next? A. Yes, he was.

Q. About how long did he talk? A. Oh, I don't know. I think he talked—it is hard to recall, but maybe 15 minutes.

Q. And about how long did Carbone talk? A. Carbone probably talked, oh, ten minutes or so.

Q. So you got your 30 minutes of speaking right here, isn't that right? A. Thirty?

Q. Yourself, five; Carbone, ten; and the Mayor, 15? A. Yes, sir.

Q. And had Mr. Nader arrived down at Constitution Plaza by 12:45, he would have had 20 minutes to talk, wouldn't he? A. Yes, to about 50 people.

Q. Do you think that, had you announced at the beginning of the program that Mr. Nader had been delayed and had to take a later flight but would be there before the rally was over, that everybody would have turned around and walked out anyhow? A. Most of these people, yes, I think they would have.

Q. What time was this speech scheduled over at Storrs, Connecticut, for that afternoon? [58] A. Two o'clock.

Q. And Mr. Nader didn't get to that rally until 2:30, did he? A. No.

Q. And that crowd waited for him, didn't it? A. Do you want a yes or no answer?

Q. Yes. A. Yes, they waited.

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Q. When you were making arrangements for Mr. Nader to come up for your rally, you did not ask him to arrive the day before, did you? A. No.

Q. You did not ask him to take an earlier flight that morning, did you? A. No.

Q. There were other flights that would put him in Hartford earlier that morning, were there not? A. I don't know.

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[59] Q. You say that you checked with Mr. Nader's Washington—one of his Washington representatives, as to what flight he was going to take? A. Yes, that is where I received the information that he would be on that flight.

Q. She is the one who elected that he take Flight 864, isn't she? A. I believe so.

Q. Did you protest that choice? A. No. No.

Q. And you checked back with her and found out that

she did get a confirmed reservation on that flight? A. Yes, I received confirmation on that from her.

Q. You know that Mr. Nader is a little bit sensitive about what he considers to be his right of privacy, don't you? A. Sensitive about what?

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[60] Q. You know, in fact, that Mr. Nader sued General Motors for a lot of money because he alleged that they had violated his right of privacy; don't you know about that? A. Oh, those kinds of violations I know about.

Q. Yes. And don't you think it unlikely, having known about those events, that Allegheny Airlines would tell Mr. Moffett, or anybody other than Mr. Nader, himself, whether he had a confirmed reservation on their airlines or not? Wouldn't that have been an invasion of his right of privacy, if they had given out that information to an outsider? A. I will tell you the truth: I didn't know that that was—it did not strike me at the time as a violation, and I have done it several times.

Q. My question is: Don't you think it unlikely that Allegheny Airlines, knowing how sensitive Mr. Nader is about [61] his private plans, how unlikely it is that they would have told Mr. Moffett that Mr. Nader was arriving or had a confirmed reservation on such-and-such a flight on such-and-such a date? Don't you think that unlikely? A. It is very difficult to answer your question because it happened. I can't tell you how unlikely it is, when it happened, and it has happened before.

Q. Well, it is what you are testifying has happened, but don't you think that Allegheny Airlines, a normally intelligent employee of Allegheny Airlines, would not hazard the risk of offending Mr. Nader about that? A. No, I don't necessarily conclude that.

Q. You have no way of knowing, do you, Mr. Moffett, as to how many of these people came to Constitution Plaza to show interest in opposing electric utility rate increases, as distinguished from those who were coming

to hear Mr. Nader? A. Only past experience in terms of the number of people that come out to see him.

Q. To be specific about this rally on that date, of the 1000 people who were there, you have no way of knowing, of that original 1000 people that you estimate showed up, how many of them were primarily interested in not having their own electric bills raised, or came for that purpose, as distinguished from hearing Mr. Nader make a speech? A. Well, sir, I don't know what would explain their [62] turning around and leaving, when they heard he was not going to be there, then.

Q. Well, 1000 of them did not leave, did they? A. Almost, by the time we were ten minutes into the rally.

Q. Isn't it a fact that only about one-third of them left? A. One-third of them left, I believe I said in my deposition, immediately.

Q. When you made your announcement? A. That is right.

Q. The rest of them could very well have left because they were getting bored with you and the politicians, isn't that right? A. Oh, precisely.

Q. Now, if you considered Mr. Nader such a hot property when it came to fund-raising, why didn't you reschedule his speech as soon as possible to repair any real or fancied damages that you had sustained by his failure to appear? A. There was no way that we could bring those three ingredients together again: the rate-case issue, and the potential givers, with the fact that he was going to be there. He was going to be speaking at Storrs anyway.

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[63] Redirect Examination

By Mr. Robertson:

Q. Why didn't you check on whether Mr. Nader would have been able to take a flight the night before or some other flight that morning? A. His coming in on this flight left at 10:15 served our purposes very well. He was com-

ing to meet with volunteers whom he was going to fire up and encourage, and then he was going to do the same thing with a large crowd, and there was plenty of time to do that.

Q. Well, did you think he was going to get on that flight, Mr. Moffett? A. Of course.

Q. Now, this group at the University of Connecticut, were there any differences between that audience and the audience you had in the Constitution Plaza rally? A. First of all, they had paid to get in. Most of them had bought tickets in advance.

Secondly, they were a young group. The campus atmosphere is quite a bit different than Constitution Plaza.

[64] Thirdly, they were not on lunch hour.

Q. Now, what is the regular lunch hour in Hartford? A. It is roughly 12:00 to 1:00 for insurance employees. That appears to be what it is.

Q. So by five of 1:00, people generally have to get back to their offices, do they not? A. Right.

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UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA
[Title omitted in printing]

Deposition Of Leslie O. Barnes
[Plaintiffs' Exhibit 24]

Washington, D.C.
August 20, 1973

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Deposition of LESLIE O. BARNES, taken on behalf of the plaintiffs.

Examination By Counsel For Plaintiffs

By Mr. Robertson:

Q. For the record, would you state your name and your residence and address. A. Leslie Barnes, 4625 Holly Road, Rockville.

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[4] Q. And your title? A. President.
Q. Of? A. Allegheny Air Lines, Inc.

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Q. What are your duties, generally, as President of the company? A. I'm the Chief Executive Officer.

Q. And what does that entail in terms of the operation of the company? A. It represents the responsibilities normally associated with being the Chief Executive Officer of the company that's responsible for operations, finance, sales, corporate administration.

Q. And you're the major executive with responsibility in the area of the company's practices and policies; would that be accurate? A. That is correct.

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[7] Q. Does Allegheny offer reservations for all of its flights? A. Yes.

Q. Why does Allegheny offer reservations? A. The same reason that every other airlines offers reservations. There are a number of reasons for it. I don't know. It depends on the individual. It offers reservations so it can indicate or control the number of passengers that are on an airplane.

Q. Is this for the benefit of the company, principally? A. No. It's a benefit of both the company and its customers.

Q. What's the benefit to customers? A. It gives a, within the normal latitudes that exist, reasonable assurance of fulfilling one's plan, whether it be business or pleasure.

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[8] Q. When you say "Within the normal latitudes," what do you have in mind? A. Well, just a matter of percentage, I suppose, but there are a number of normal expectancies that a flight will operate as scheduled and as planned. And the passenger, in calling in and asking for reservations, if the seat is available at that time, he is confirmed.

Q. Is there any legal requirement to do this? Could you sell seats on a first-come-first-serve basis if you decided to do it that way? A. You could.

Q. Since when has Allegheny offered reservations? A. Ever since I've been with the company.

Q. And how does a passenger get a confirmed reservation for a particular flight? A. He or his agent or representative calls and ask for a seat.

Q. And then the Allegheny representative or agent will confirm it? A. Um hmm.

Q. Um humm.

And do they make a record of it at that time? A. There are records, as far as I know.

[9] Q. Are there any other requirements that a passenger has to fulfill prior to flight in order to get a seat? A. It varies, maybe to get his ticket to be at the airport within a reasonable time so he can be checked in, the baggage handled——

Q. Is there any requirement for reconfirmations, specifically? A. I don't know.

Q. Is there any requirement for purchasing the ticket 30 minutes in advance or more, generally speaking? A. It will vary, depending on the flight, depending on the other, but I'm not aware of what the differences are. Normally, it's well to have the ticket picked up before arriving at the airport.

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[10] Q. What is a confirmed reservation on Allegheny? A. When a passenger calls, if seats are available it's confirmed. I'm not aware as to whether we require that the ticket be picked up so far in advance, and the seat could be tentative, I suppose, as to that point. But I'm not familiar with those details.

Q. Aside from the procedures, what I'm trying to get is, what is the passenger entitled to expect when he gets a confirmed reservation? A. Well, he would expect, normally, to have a seat.

Q. And what does Allegheny want him to expect, just that? A. Of course.

Q. Well, does Allegheny consider to have a contractual or a moral obligation to give him a seat when he arrives? A. In the whole gamut of this area of reservations, the area of operations and the fulfillment of an operation area, there are a number of things that can cause a flight even not to operate or to even have less passengers than is indicated: Weather, it can be a change of equipment, whatever. So that within the framework that we operate, we do not have a contractual liability.

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[11] Q. Does Allegheny consider that it has a good faith, business obligation in those circumstances or a moral obligation? A. Yes, it does everything it can do to fulfill its obligations, real or implied.

Q. How do people find out about Allegheny's services and about the reservations that are available for its flights? A. Through advertising, through the numbers that are given and through the calls that they make.

Q. Excuse me. Through the numbers that are given? A. The number to call. Either in—every advertisement gives a number or go through your travel agency.

Q. So the company does want them to know about them? A. Of course.

[12] Q. In your advertising, do you try to convey an image of reliability and dependability? A. Certainly.

Q. Do Allegheny's tariffs set for the reservation services? A. The tariffs?

Q. Yes. A. Well, I don't know where it all is, where it's all set forth. But, certainly, the passengers through advertising, through publications of various kinds, do know what the number is to call, whether it's through the tariffs, or the schedules, or the telephone bill.

Q. Do you know what the tariffs might say about—— A. No, I do not.

Q. —who's entitled to a seat on a particular flight? A. No.

Q. Well, is a person, would you say that a person is justified, would be justified in actually relying on having confirmed reservation for a particular Allegheny flight when he's making business or personal plans? A. Yes, and I think our record in that area is identical, or is in cadence with the rest of the news. But I think that the person making reservation would have normal [13] expectancy of completing that flight as planned.

Q. And, in fact, do you find that people actually do make important plans relying on reservations that are confirmed by Allegheny? A. I don't—I haven't talked to passengers.

Q. You never heard from a passenger that—— A. Sure. But within that context?

Q. Well, I'm saying, is it your expectation or the company's expectation that, in fact, people really do rely on the reservations that they get from Allegheny when they're making their plans? A. Sure. Whenever you make a reservation, whether it be a restaurant or this, you would normally expect to have it completed, sure.

Q. Yes. And this would apply to passengers of course as well, prospective passengers, as well as to other people, right? A. Sure.

Q. Well, is there anything a person could or should do beyond obtaining his confirmed reservation, and purchasing his ticket, and complying with your checking rules to be sure that he's going to be accommodated on a flight? A. No. I think as a matter of practice you should [14] get to the airport in time to have your—get checked in and get your luggage and get the things done necessary.

Q. Is this—do you tell passengers this in your advertisement or tariffs? A. I don't know. No, I don't think so.

Q. Well, how would someone know what he should do beyond, you know, making a reservation and getting his ticket? A. Well, how much do you have to tell the passenger? Do you tell them to pack their bags, what to take with them, whether it's a warm climate or cold climate? There are some things if a person is going on a trip they ask questions that they're not familiar. If you try to give them a rundown of everything they should do, you would spend half an hour with each passenger.

Q. In fact, isn't it true that there are occasions when people were holding confirmed reservations for an Allegheny flight and it can't be accommodated or are not accommodated? A. That happens. That's true.

Q. What kind of occasions might that occur? A. I don't know. The record is clear on that. I'm not familiar with that record.

Q. What record? [15] A. Where there are over sales. What's the basis of your question, then?

Q. I'm just wondering. I'm trying to look at it from the passenger's point of view, what does he expect from Allegheny. I'm wondering what are the circumstances in which he might not get on a flight. A. Very minimal that he will not get on it.

Q. I suppose weather would be one, is that right, if the weather is so bad that the flight has to be canceled? A. Weather could be one.

Q. Mechanical difficulties would be another? A. Could be another.

Q. I understand that the government can take over some space from time to time? A. Perhaps.

Q. And there could be an error in reservations which would, or a computer breakdown which would leave you confirmed passengers for the flight; would that be true? A. It could happen.

Q. Yeah. And overbooking? A. It could be. And I think that the point that you're leading to, and we can save some time perhaps in getting to it, is that a problem has been present in the industry. I've [16] been in it, trying to find a balance between no-shows on the one hand and how much you should try to compensate for no-shows and empty seats. And there's a wide history in terms of attempts made to meet those, to the extent that I'm out with zero; that is, zero oversales, and zero seats unsold you overbook.

Q. What is overbooking? A. What do you mean "What is overbooking"? I just told you.

Q. Well, you were setting up a balance or attempts between finding the number of correct balance between no-shows and the number of passengers you carry. A. Right.

Q. And then you said to the extent that you come out to a zero excess that you overbook. I don't think I understand you. A. No. I said the extent that you come out with zero overbooking to zero oversales and zero empty seats. That's the optimum.

Q. That's the optimum.

I'm just asking you what is overbooking for the record. A. I have to go right back what do you mean, 'cause I [17] just got through telling you.

Q. Well, would you say the correct definition of "overbooking" would be the reservation or expectance of reservation for more seats on the flight than you have? A. We have a factor of two per cent.

Mr. Roberson: Wait just a minute. Listen to the question until he finishes it, rather than anticipate, because you

never know what he'll tell at the end of the questions if you do that.

The Witness: Okay.

By Mr. Robertson:

Q. Would it be correct to define "overbooking" as acceptance of more reservations for seats on a flight than you actually have space for? A. That would be correct.

Q. What is planned capacity? A. One hundred seats is to go out with one hundred passengers.

Q. That's all that it is? Doesn't the term imply a system as used by Allegheny, or an approach used by Allegheny? A. It could, I don't know.

Q. You're not familiar with the term? A. No.

[18] Q. Is it true that Allegheny under—that Allegheny intentionally overbooks certain of its flights? A. I don't know. I mean I don't know of an instance in this. I would assume that in the fulfillment of that policy there would be some overbooking.

Q. On what flights does this apply? A. I don't know.

Q. Are there any flights in which overbooking is prohibited? A. I don't know.

Q. Well, how does the planned capacity system work? A. I don't know.

Q. Who's in charge? A. The—Mr. Jenkins is responsible for that.

Q. You know who sets up the authorized number of oversales on a particular flight? A. No, I do not.

Q. You know whether it's set by a particular flight or by market? A. I don't know.

Q. How often has this been reviewed at the top levels in the company? A. I haven't—I'll tell you again. The basic area [19] that I look at is the one that finds the—is nearly the perfect balance that you can have between no-shows and oversales, oversales compensating for no-shows, not oversales or overbooking.

Q. All right. A. To the extent that their excess is either no-shows or oversales, I would have no way of knowing

except to investigate it. But as an industry matter, we're about in the middle portion of it.

Q. You're not aware that Allegheny's record on oversales is substantially above the industry average? A. No. In fact, I have the opposite impression that it is not. It's about at industry average.

Q. So when the system gets out of balance, you do get some reports about this, is that right? A. I would hear about it, I think.

Q. And have you received any of such reports? A. No.

Q. None that you can remember? A. I have not received any.

Q. What happens when the authorized number for a particular flight is reached and that number of reservations come in? [20] A. You mean on a given flight?

Q. Yeah. A. This flight is dispatched.

Q. I'm referring to when the reservations are received in advance of flight up to the top number that they will accept. A. I don't know.

Q. You know what closing flight is for reservations? A. No, I would have to guess at that. I don't know.

Q. What is confirming a flight? A. I don't know.

Q. Do you know where a flight is overbooked in advance Allegheny might have people call up some of the persons holding reservations to check and see whether they're actually going? A. I would think that a good administration would do that, yes.

Q. Do you know whether Allegheny does that? A. I don't know. No, I don't.

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[21] Q. What are the reasons that Allegheny will accept more reservations for a flight than it has seats available? A. If it occurs, it would be for the reason that I enumerated earlier, because statistically there would be a history of no-shows, and it would be for the purpose of compensating for a proven or statistical record of no-shows.

Q. Well, how does this help the passenger? A. What do you mean how does it help the passenger?

Q. Well, does it help the passenger? A. It certainly helps the passenger who wants to get a confirmed seat.

[22] Q. Any other way that it might help the passenger? A. I haven't thought about it.

Q. How does it help the company? A. It goes toward achieving the policy laid down earlier by having as few empty seats caused by no-shows responsible.

Q. Does this increase the profits of the company? A. It would have an obvious impact on it.

Q. Any other reasons for the policy? A. I have not thought of any.

Q. Does this, in fact, result sometimes in a passenger, who holds a confirmed reservation, being denied boarding on the flight? A. Occasionally that happens.

Q. Do you know what the other reasons are for denied boarding? We've talked about some of the equipment change problems and—— A. There are other reasons than just this one, but I'm not the one who can give you that, because I don't have the facts and I'm not familiar with all the operation of reservations in this area. So I have to sit here and tell you I haven't thought about it, and that's exactly the answer you're going to get.

Q. Well, if you don't know, just tell me. There's no problem.

[23] I suppose the computer error or just a breakdown in the reservations system would create this denying of boarding problem from time to time? A. I don't know.

Q. Do you know if free sale agreements might deny boarding sometimes? A. I don't know.

Q. Why are Allegheny's agents instructed to tell a passenger, who's been bumped because of an oversale, everything but the planned capacity is reason? A. You have information that indicates there are?

Q. I'd like to show you a copy of the *Allegheny Passenger Service Manual,* 6-100, at Page 4, and if you'd just like to read that over.

Mr. Roberson: Do you want to give a date for it, because they're revised from time to time.

Mr. Robertson: Yes. This bears the date August 15, 1970. It may have been subsequently revised, I don't know.

Mr. Roberson: Well, I submit that, having looked at that, it does not state what counsel says it does, namely, that you're instructed to tell them everything but computer breakdown, which is the way you phrased your question. It [24] does not so state.

Mr. Robertson: Well, we'll just explore that, then.

By Mr. Robertson:

Q. Mr. Barnes, would you tell me what the Allegheny agent is supposed to do when an oversale occurs, based on the Allegheny manual here. A. I would simply suggest you put this in the deposition, 'cause all I would be doing is reading from it.

Q. Well, I'd like you to tell me in your own words what that means (indicating). A. I'm not going to tell you in my own words. All I'm going to do is tell you this. Do you want me to read it?

Q. Yes. A. "Having been previously identified under the heading *Handling the Oversold Passenger,* try to separate the oversold passenger from other passengers. Be patient, courteous and tactful. Listen considerately. Let the passenger talk."

Q. Let me interrupt you for a second and ask you questions:

Why is the agent instructed to try to separate the oversold passenger from the others? A. Well, under the basic policy, the airplane is full, let the airplane go. Don't let him get on the airplane. [25] There's no purpose to be served on that.

Q. It has nothing to do with the fact that he might be irate, or angry, or create a scene of some kind? A. I suppose it could. I don't think it would be good tactics and good policy to do this in any business to get a person off the point where you can have a conservation with him.

Q. Why can't you do it right where he is? A. Well, that's the answer to your own question. Can you do that with a crowd around you?

Q. I don't know, sir. A. Well, I don't either. I know if I've got a problem I'd just soon sit down and discuss it with somebody, rather than be mixed up with a lot of other problems. I want that man's attention. So——

Q. Okay. A. Shall I go on and read it?

Q. Yes, please. A. "Apologize for the inconvenience and interruption to his travel arrangements. Explain the reason for the oversale——

"Caused by an unintentional air error made for the reservations of a flight. This type of error is infrequent and unfortunately impossible to rectify at this time. His [26] oversale report is immediately submitted to a central reservation office who investigates and follows up with the area office, which would be a travel agent, or airline, or one of our own offices.

"Or equipment substitution. (Explain in as much detail as possible.)

"Or weight restriction. (Explain in as much detail as possible.)"

Q. Is that the reasons that you're giving that are supposed to—— A. There are three reasons that are given as examples. There are others.

Q. Well, that's enough. That's the end of that part.

Where is the agent not instructed to tell the passenger about overbooking practice with Allegheny which may have caused his denied boarding?

Mr. Roberson: He's not instructed by that not to tell them.

Mr. Robertson: Let me rephrase the question. You're quite right.

By Mr. Robertson:

Q. Why is the fact that Allegheny does sometimes overbook its flights and does result from time to time denied [27] boarding not set forth as one of the reasons to tell

passengers? A. I don't see the point in it. You want me to give a whole dissertation on all of the factors that could cause an oversale?

Q. Well, isn't it somewhat misleading when an oversale maybe caused by intentional planned capacity practice of Allegheny not to at least tell the passengers what happened, instead of saying that it was caused by unintentional confirming in reservations? A. Never is there an intentional oversale. The assumption is that you are booked to the point that, taking into account no-shows, you do not have an overbooking.

Q. Well, isn't it true that there is intentional overbooking? A. Within the framework of the basic policy I laid down to you.

Q. The answer is yes, right? A. Yes, I guess it would be.

Q. But you don't think that you should explain the reasons for the oversale and concede that it might have been caused by intentional overbooking in flight? A. No. How would you know—how could you say that at that point? How do you know that is the cause of that [28] particular oversale? It could be caused by another airline having confirmed seat that had not been confirmed, or someone on the waiting list that had been confirmed by another agency or another airline. You don't know how it is. How are you going to tell the passenger, unless there's an intentional error with it, if in fact it's true?

Q. I asked you a few moments ago what are the causes for not boarding. A. As I say, there could be millions of problems.

Q. Is there any way that Allegheny can tell that a flight is overbooked in advance, other than telling if a plane—that other seats are left over, how much passengers are left over? A. I don't know. I would presume that there could be some way that you could tell when you have an overbooked situation.

Q. What is a PNL? A. Probably Passenger Name List.

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[29] Q. Is this a check-in tool? A. I don't know. I'm not familiar with these tools that are used in this operation end of the company.

Q. But if it's true that there are probably ways in which you could tell in advance when a flight is overbooked, and if the flight does fill up to capacity and there are denied boarding, you would have a pretty good idea at that point that overbooking might have been the cause; would that not be correct? A. I suppose so, but I'm not familiar with these procedures.

Q. Wouldn't it be fair to tell the passengers about that? A. It's a matter of opinion, and I'm going to be drawn into that. I recognize the basis for your question, but I can't answer that on that basis.

Q. What is Allegheny's policy on that point? A. Allegheny's policy is, again, to try to compensate for the statistical report for no-shows on a particular flight. I assume that that is done, and to that extent then, planned overbooking does occur.

Q. My question is, what is Allegheny's policy with respect to telling passengers candidly about what happened? [30]

A. We've outlined there what we tell the passenger, and if there are other factors that are not there, you can have a whole series of sheets that can possibly have things that could happen I can put down there, but you don't do that anyway.

Q. What steps has Allegheny taken to tell the public or passenger about its overbooking practice? A. I don't know. I wouldn't say one is necessary.

Q. As far as you know, none is? A. Yes, sir.

Q. Isn't it really true that Allegheny doesn't really want its passengers or the public to know the truth about this, that Allegheny intentionally overbooks its flight?

Mr. Roberson: Counsel, he's just told you that they don't intentionally oversale any flights. And I want to register an objection to this full line of questioning on the ground that it's irrelevant to this lawsuit, because Mr. Nader knew

fully well by reason of his previous experiences with Eastern Airlines, American Airlines that there is on occasion overbooking, and if you have an okay confirmed reservation, it doesn't necessarily mean that you're going to 100 per cent be seated on that flight, particularly since if you run up there right at the time the plane is supposed [31] to be taking off, as Mr. Nader did. I register an objection that these are irrelevant.

Mr. Robertson: Thank you. Well, I missed—have misunderstood the prior testimony, but I thought it was conceded that Allegheny does intentionally overbook its flights. It may not intentionally deny boarding, but it does, as a matter of practice, overbook its flights in advance; am I not correct?

The Witness: It was the end of the context of my description to you. The policy is the balance, no-shows and no-booking sales.

Mr. Robertson: And, in my words, that means that it does intentionally overbook its flight with the anticipation or the hope that some people would show?

The Witness: With the anticipation that they aren't going to show; that is right.

Mr. Robertson: And are passengers really entitled to be advised that their confirmed reservations may not be honored because of this?

The Witness: Yes.

Mr. Roberson: I object to that. It's irrelevant because Mr. Nader knew this. This lawsuit involves Mr. Nader and not anybody else. I instruct you not to answer.

[32] Mr. Robertson: It was already answered.

Mr. Roberson: Well, I move that it be stricken.

By Mr. Robertson:

Q. Based on Allegheny's actual experience, isn't it statistically certain that this overbooking is going to result in some denied boarders in some of its fights? A. Statistically, it's possible.

Q. Are you aware that Allegheny reports its denied boarder statistics to CAB on a monthly basis? A. I'm not aware of this. The assumption is there, of course, that that's done because the CAB couldn't present its own statistics for industry.

Q. Did you ever review these? A. No. You mean the reports we submitted or the CAB comparison?

Q. Either. A. I do the latter.

Q. Does the revenue gain to Allegheny from use of this planned capacity get the planes fuller or optimize the reservation with a number of seats? Does that revenue gain see the amount of denied boarding compensation and other costs or expenses that are associated with over access? A. I don't know.

[33] Q. Wouldn't this be a question that would be relevant, considering whether this was a good policy or not? A. Some areas or assumptions, and this certainly would be one, in that the number of oversales that result from this policy are not that common, and it doesn't take but few seats that are occupied that would otherwise be denied. To make the assumption a logical one, it's a gain for everybody, including the passenger who might have been told that he couldn't go because the flight was booked up. It is otherwise there.

Q. Well, then, isn't the assumption that Allegheny should intentionally overbook its flight, as we've described within the perimeters that you've discussed, in order to increase its profits, despite certainly that some people are going to be left standing at the gate? A. I'm not sure what your question means. What is the question?

Q. Well, isn't the assumption that Allegheny is making, or that you as Allegheny's top management officially making that, in order to increase or maximize profits you should continue this policy of overbooking flights——

Mr. Roberson: I object to the question on the ground it leaves out the possibility of minimizing losses [34] from

flying airplanes that are half empty. I object to the form of the question.

By Mr. Robertson:

Q. Why doesn't Allegheny stop this practice? A. You don't stop something unless there's a need to stop it. But the point that was just made here is a very right one; that is, that you're checked, you'd be losing a certain amount of your capacity on every flight, and it's a loss that you can never get back. And it's not good management to do otherwise than to try to compensate for that fact that the passengers are going to overbook, they're going to no-show, they're going to have changes, they're not going to have to take time to call in, and there's no redress in that area excepting that it's too late at that point to get people on that airplane.

Q. Well, isn't it rather unfair to penalize the people who do show up for the flight and have confirmed reservations? A. It doesn't happen that often to be that kind of a problem.

Q. How do you know it doesn't happen that often? A. Well, I would have heard about it, I think.

Q. Well, Mr. Barnes, I'd like to put in your hands for you to look at the reports that have been provided to me [35] by your attorneys, which are the ones filed with the CAB, concerning denied boarding.

And if you want to go over those, please take some time to do it. I want to ask you a few questions about the numbers of those reports. I've done a few calculations on that.

(Handing to the witness.) A. November, 1967.

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[38] Q. Is there any difference in the way, other than the numbers that are applied to the flight, to the particular flight and date in question, is there any difference between Flight 864 overbooking and other flights on Allegheny system? A. I don't know.

Q. You had any discussions at all about changing the

overbooking or the planned capacity system with other officials in the company? A. No, I have not.

Q. With any of the company directors? A. No.

[39] Is the Board aware of your overbooking practice? A. I doubt it.

Q. They've never approved it as far as you know? A. My earlier answer obtains.

Q. Excuse me? A. My earlier answer obtains. I told you I don't think they know anything about this.

Q. Have you ever looked into any alternatives to overbooking? A. No.

Q. Are you familiar with the concept of conditional reservation that can be adopted by some of the carriers? A. Only generally.

Q. What do you know about it in terms of how it works? A. I'm not familiar with the details, sufficient to discuss it.

Q. You know anybody in Allegheny that would be? A. No.

Q. Is this system used, the conditional reservation system used by Eastern? A. Various forms of it. I'm not sure what Eastern has.

Q. You're aware that Eastern officials consider it to be a great success?

[40] Mr. Roberson: There isn't any evidenciary proof of that.

Mr. Robertson: I'm asking Mr. Barnes whether he has any knowledge.

Mr. Roberson: He assumes that it is so.

The Witness: I don't know.

By Mr. Robertson:

Q. Did you ever discuss it with any Eastern official? A. No.

Q. Is there any specific reason Allegheny has not looked into this conditional reservation plan? A. None that I can say.

Q. You know whether or not the conditional reservation approach has demonstrated that overlooking is not really an economical necessity? A. No, I have not.

Q. It's your understanding that conditional reservation would be fairer to the passenger? A. I am not the way to the answer to your question.

Q. What other steps have you considered, if any, to deal with the no-show problem?

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[41] Q. What other steps has Allegheny taken, if any, to deal with the no-show problem? A. We have not taken any additional steps. We don't deal with this as a problem.

Q. Your no-shows as a problem? A. No. You asked me a question, what did we do with regard to oversales. Then you asked me—you turned the answer around and said right back your no-shows as a problem. I didn't say that at all.

Q. I don't mean to distort your testimony. I think we're having a communications problem.

I'm asking what steps has Allegheny taken, if any, other than its planned capacity approach, to deal with the problem of no-shows. A. I've told you none that I know of.

Q. Okay. And why not? A. I know it's not in my area, and it hasn't emerged as a problem that would call for my attention.

You have to answer in this that there's a study attempt made to keep this balance between no-shows and the [42] history of no-shows upon which the statistical record is based, that goes to the question of how much you overbook to compensate for that. So there's a continual revision and a continual study of that, I'm sure.

Q. But if I understand your testimony, you don't have any knowledge of how that system works at all? A. No, I don't. It is not of a nature or dimension that would cause me to be looking at it.

Q. Would you agree that a person, who is taking the care and the caution to book a reservation 3 or 4 days in advance of a flight, has complied with all the check-in and

other requirements should be entitled to be accommodated on a flight ahead of a pessenger who's just booked the night before? A. It would be impossible to administer that in any duties.

Q. Why is that? A. How are you going to determine it? Mr. Nader came to this 30 seconds after the gate closed. At that time, how are you going to determine what the order of priorities are in terms of when people got their ticket, or for that matter, who made those reservations.

An inquiry of questions come in is that made three weeks ago, picked his ticket up an hour before the departure [43] time. How do you determine there who made it first? You can't.

I'm not intending to ask you any questions. All I'm indicating that it's impossible to administer a program, and just saying for the good of the whole a hundred passengers instead of delaying them to go 3 or 4 or an hour trying to find out who did what first, you say go and——

Q. Am I mistaken in my understanding that Allegheny has the record of the exact time and date which every reservation for flight is made? A. I suppose you can go back and restructure it, I don't know.

Q. I understood that was on the passenger name record, the PNR? A. I don't know. I don't know where you got your understanding. I don't know that.

Q. So, as far as Allegheny is concerned, it really doesn't matter how far in advance the passenger has booked his reservation? A. Well, an oversale occurs and that flight is dispatched when the seats are filled.

Q. That's Allegheny's policy? A. Yes.

[44] Now, you mentioned that Mr. Nader arrived after the gate closed for his flight? I've been informed that you didn't have any knowledge, particularly of that episode. I ask how you know that. A. I have had discussions where counsel have looked at the record, of course, and there can be a question on this.

Q. Excuse me, sir? A. That can be a question on this.

Q. That's what you've been informed by someone else? A. Um hmm.

Q. Your attorney. A. I don't remember who it is.

Q. Have you discussed the particulars in the case with the other people in the company besides counsel? A. No. No.

Q. You haven't discussed it with Mr. Ferguson? A. No.

Q. Mr. Koloudny? A. No.

Q. Are you aware that great inconvenience maybe caused to a passenger who's denied boarding on a flight where he's holding a confirmed reservation? A. That's certainly possible.

[45] Q. You're aware that many of your passengers travel according to business reasons? A. A majority of them are.

Q. For example, they maybe on their way to an important business meeting? A. Could be.

Q. If they're denied boarding on a flight, isn't is true that it is possible that opportunities maybe lost forever?

Mr. Roberson: Now, Mr. Robertson, anything is possible, and I don't think it's material in this lawsuit what's merely possible.

Mr. Robertson: Well, I'm trying to inquire into Allegheny's knowledge of possible consequences when somebody is denied boarding.

Mr. Roberson: Anybody knows that it's possible that somebody is going to be upset if they don't get on boarder flights. So I don't think you're getting anywhere by beating this dog.

By Mr. Robertson:

Q. Do you know, Mr. Barnes, that somebody denied boarding on a flight might miss an important business opportunity forever? [46] A. It is possible that would happen.

Q. And isn't it true that other people, besides the passenger, maybe greatly inconvenienced such as people waiting to pick up the passenger? A. That is possible.

Q. Or other people's schedule to attend a business conference, or something or another? Is that possible? A. That's possible, too.

Q. Okay.

And isn't it true that other people also make their plans in many cases relying on someone else's reservation being honored for an Allegheny flight? A. Of course it is. Go ahead.

Q. Well, isn't it Allegheny's purpose to have people living in communities that it serves to be aware of Allegheny's services and feel that they can rely on these confirmed reservations? A. Of course.

Q. For example, if an important meeting were to be held in Hartford, the chief speaker was to come especially for the meeting from Washington, the meeting time depending on the speaker's ability to get there, is it Allegheny's intention to have the Hartford people feel that they can rely [47] on Allegheny to honor the reservation?

Mr. Roberson: I object to that. I think that the common assumption would be, if it's all that important, the man would allow himself 5 or 10 minutes leeway or book an earlier flight.

Mr. Robertson: Would you adopt the counsel's statement in that case?

The Witness: Yes.

Mr. Robertson: In other words, if it's a really important appointment, you should book another flight?

Mr. Roberson: No, I said an earlier flight.

Mr. Robertson: Well, that is another flight.

Mr. Roberson: No, that would indicate two flights. I don't approve of multiple booking.

Mr. Robertson: I'm certainly not trying to endorse a multiple booking approach.

By Mr. Robertson:

Q. Do you feel then that if a person has a really important business appointment in Hartford that he would be well-

advised to book an earlier flight? A. Look. The reservation and the offering of reservations suggest that the likelihood of being completed within the time planned is going to be excellent. And it's very, [48] very high; it goes to 100 per cent.

Any experienced traveler knows that there are occasions, whether it be for snow storms, other obstacles, whatever, that there is some possibility of that mission not being completed.

Now the person, the death of someone, is completely unsophisticated in that area, than there maybe some validity to your question, right? In this case, it is not.

Q. You know whether in this case, Mr. Nader's situation, that the denied boarding was caused by overbooking? A. I am not familiar with that case, as I told you, beyond preparation of this.

Q. Has anyone told you that this is one of the reasons for the denied boarding in this case? A. What was the reason for denied booking?

Q. Overbooking.

Mr. Roberson: We'll stipulate that it turns out that was the reason in this case. So——

Mr. Robertson: Okay.

• • • • • • • • • •

DOCUMENTARY EXHIBITS AT TRIAL

[Plaintiffs' Exhibit 4 –
Allegheny Memorandum]

F. R. Allen May 2, 1972

J. R. Shier

Oversale – 864/23APR DCA

Flight 864 on April 28 in DCA was oversold by 3. Below is a list of discrepancies found:

DCA/BDL

– R. L. Biscomb: PNR received from MIAEA April 25. Ticket issued by SDFEA April 25. PNR cancelled by MIAEA April 27 0837EST. Passenger shows boarded as a standby. New PNR received from MIAEA April 28 0617EST showing HL; message processed by PACER.

– J. Rucienski: Passenger shows as cancelled no-show; however, was boarded by DCA. Ticket issued by DCA ATO April 28.

	AU	FA	CD
Programmed PC	115	106	6
Adjusted PC		NONE	

0 – Number of time overbooked by CRC
1 – Number of times overbooked by nightly update
1 – Number of times oversold last four weeks
107 – Booked one hour prior

Flight closed April 27 1230EDT.

J. R. Shier
CRC Unit Supervisor

pg

[Plaintiffs' Exhibit 5 –
Allegheny Memorandum]

ALLEGHENY AIRLINES

EXHIBIT "5"

INTER-OFFICE CORRESPONDENCE

TO: A. Asumma DATE May 4, 1972

FROM: J. S. Jenkins

SUBJECT: Oversales

Per your memo of April 28, 1972, we have investigated the oversale on Flight 864 April 28. We are attributing the three oversales to boarding discrepancies and planned capacity. Of the passengers boarded DCA/BDL, one was on the waitlist and one had been previously cancelled as a no-show.

Flight 864 consistently departs with empty seats. It has only oversold once before. That was on April 24 by three. The posted leg load factor for April on this flight was 94%. This means an average of six empty seats on days the flight was booked full.

As you may be aware, we suffered a severe computer problem on April 13, which affected the inventory on many flights. In most cases, the processor continued to accept sales on flights which should have been closed. Although sometimes we were aware of a severely overbooked flight prior to departure, it was too late to alleviate the situation. In all cases, we advised the CSM at the affected station and attempted to arrange for extra sections when feasible. Your comment on the surge in oversales in BAL, BOS, and DCA is true. This inventory problem affected all large stations.

We are not blaming the sudden rash of oversales entirely on the inventory problems. As of the first of April, we have had all large stations under review, rebuilding flight histories in specific markets. For the present, we have lowered seat authorizations. I am sure, by now, you have noticed a change in the number of oversales.

Currently, we are investigating all flights oversold. When these investigations are completed and we have rebuilt flight histories in large stations, we will adjust planned capacity accordingly. However, we cannot realistically adjust PC to compensate for ticketing and boarding discrepancies and passengers cancelled in error as no-shows. If we can be of further assistance, please advise.

J. S. Jenkins
Director of Reservations

pg

cc: L. T. Ferguson
R. Garcia
G. Wigfield

[Plaintiffs' Exhibit 6 –
Allegheny Passenger Service Manual]

OVERSALE

An oversale is a passenger who holds confirmed ticket for a flight, and who checks in for the flight (this means appearing at our local ticket lift point before scheduled departure time), but who cannot be accommodated on that flight because of insufficient seats or seats being blocked. Give every oversold passenger a copy of "Notice to Passenger Denied Boarding", Form SS-112.

It is the oversold passenger's choice to accept or reject alternate transportation; unless it is on a Certificated Air Carrier of Public Convenience issued by the CAB. If a passenger accepts and uses alternate transportation, such as air taxis, limousine, cabs, rental cars, etc. and the alternate
C transportation is planned to arrive at the passenger's destination within 2 hours of his scheduled arrival (4 hours for Canada) do not pay D.B.C.

The term stop-over means a deliberate interruption of a passenger's trip which is scheduled to exceed four hours at a point between the place of departure and destination. A passenger traveling Williamsport to St. Louis with a connection in Pittsburgh is oversold. It is Allegheny's responsibility to get the passenger to STL, not PIT, within 2 hours of the original scheduled arrival time to avoid paying D.B.C.
C If unable to get to STL, D.B.C. is paid IPT-PIT.

When rerouting an oversold passenger to another airport within the same metropolitan area it is the passenger's choice to accept or reject the rerouting. A passenger is oversold with a destination of O'Hare. Alternate transportation to Midway arrives within 2 hours of his scheduled arrival. If the oversold passenger accepts and uses the alternate transportation, do not pay D.B.C.

If a passenger is "oversold" the cost of the services you provide him must not exceed the value of the refund of his ticket and the D.B.C. due him.

Airline employees and their eligible family members traveling Reduced Rate (Industry Discount) are not eligible for D.B.C. payments.

Exhibit 6

OVERSALE

Was the oversale caused by substitution of equipment?

YES → Offer the same services as for cancellation of a passenger's boarding station due to Controllable conditions.

NO

Is there a flight or flights on AL or other airlines that is planned to arrive at the passenger's ultimate destination or stopover point not later than 2 hours after the flight(s) on which confirmed space was held (4 hours for flights to and from Canada.)

YES → Rebook passengers:

Retrieve passenger PNR – Adjust space as required using PACER procedures.

If space is available,
- prepare A-38, Flight Interruption Manifest –

OR

- reissue ticket using PR-6 Rule 380 if travel is to be on two or more airlines.

NO

See Next Page.

OVERSALE (CONT'D)

Is there chartered surface transportation (bus, limo, taxi, car rental) that
- is acceptable and is planned to arrive at the passenger's destination or stopover point not later than 2 hours after the flight(s) on which confirmed space was held? (4 hours for flights to and from Canada.)
- charges less than the combination of boarding involuntary refund plus denied boarding compensation?

YES → Charter transportation.

Use A-6 as authorization.

Lift passenger's flight coupon, attach to Found Ticket, Form A-26, describing why ticket was lifted.

Send to Revenue Accounting in next Sales Report.

DO NOT PAY PASSENGER DENIED BOARDING COMPENSATION.

NO ↓

Is there an Air Taxi acceptable to the passenger that
- meets the requirements in 6-75.
- is planned to arrive at the passenger's destination or stopover point not later than 2 hours after the flight(s) on which confirmed space was held. (4 hours for flights to and from Canada.)
- charges less than the combination of involuntary refund plus Denied Boarding Compensation.

YES → DO NOT PAY PASSENGER DENIED BOARDING COMPENSATION.

NO ↓

Offer to pay Denied Boarding Compensation, and offer the same services as for Cancellation of a Passenger's Boarding Station or Deplaning Station due to Uncontrollable Conditions.

HOW TO COMPUTE THE AMOUNT AND PAY THE DENIED BOARDING COMPENSATION

C

1. Determine the value of the flight coupon. This value is the point-to-point fare without tax from the oversold boarding point to the destination shown on the flight coupon less any discount applicable to the coupon.

2. If the value of the flight coupon is — Pay the Customer

   $25.00 or less ---------- $25.00

   More than $25.00 ---------- Full value of coupon and not more than $200.00.

3. Prepare A-79, Refund Draft, for the amount of the compensation and make these special entries:

Ticket Form and Serial Number

From oversold boarding point to destination shown on flight coupon

"OS" and amount of compensation

Flight Number and Date

A77 STATION NO. 36
FORM 522216 SERIAL 402025
FROM PIT
TO NYC
☐ VOLUNTARY
☐ INVOLUNTARY
FLT. 240
DATE 17-12-70
REASON

FARE			1
TAX			2
OS	27	63	
TOTAL	29	63	12

N Note: All Allegheny Commuter Airlines pay Denied Boarding Compensation to oversold passengers.

- *If GTR is form of payment of passenger's ticket, make Refund Draft payable to "Treasurer of the U.S." Enter passenger's name, "GTR," and have passenger sign in the "Reason" box of the Refund Draft. Do not cash Draft for him.*

- *The passenger must receive the D.B.C. payment on the date and place of the oversale. If the passenger's alternate transportation departs before the Draft can be prepared, you have 24 hours to mail this to the passenger.*

NOTE: If passenger is a standby on a flight that is scheduled to reach his destination within the 2-hour time limit, do not pay D.B.C. immediately. Advise passenger to return for D.B.C. payment if he is not cleared on the standby flight.

4. Stamp back of Refund Draft with "Release of Liability" stamp.

5. Give the Draft to the passenger.

- The passenger may ask you to cash the Draft. If so, ask passenger to endorse draft. Include in next bank deposit.

C 6. For additional information, see Rules Tariff, Rule 380.

OVERSALES

An oversale is a passenger who holds confirmed ticket for a flight, and who checks in for the flight (this means appearing at our local ticket lift point before scheduled departure time), but who cannot be accommodated on that flight because of insufficient seats or seats being blocked. Give every oversold passenger Form SS-112.

Oversales are usually the result of:

- Reservations or travel agencies unintentionally confirming passengers on waitlisted flights.
- Ticket agents issuing tickets without verifying reservation status.
- Stations clearing standbys for a flight and overbooking downline waitlisted stations.
- Aircraft weight limitations caused by high fuel loads or restricted take-off weights.
- Substitution of equipment.

Use the following procedures to:

- clear overbooked flights.
- handle oversales when they occur.

Procedure

1. Check the PFS/Trip Dispatch to determine:

   - the number of passengers onboard through your station.

   - if there are NRSA, clergy, or desiring passengers that can be removed to accommodate confirmed passengers.

2. Inspect each flight coupon for flight/date and reservation status. Do not check in passengers with:

   - waitlist tickets,

   - open tickets,

   - tickets issued for another flight,

   unless you check the Passenger Name List (PNL) or retrieve the passenger's PNR and the passenger is holding confirmed reservation.

D

¢ 3. If steps 1 and 2 do not clear the overbooking, and the number of passengers actually checked in is greater than the number of seats available, before boarding the flight:

   - consider alternate transportation between your city and the passenger's destination.

   - select a local boarding passenger to be refused who will be least inconvenienced.

   Do not select passengers who are:

   - elderly
   - sick
   - incapacitated
   - unaccompanied children
   - holding connecting interline space
   - traveling as a group

¢ 4. Advise NRMR/NRSP passengers employed by Allegheny or other airlines about the overbooking. Tell them of later flights and ground transportation they may take. If they decide to stay on board, do not remove them but obtain their names and report it to the Director of Ground Services for his review.

¢ 5. If the oversale is not known until the flight is being boarded, (this applies particularly where gate check-in is used) the last passenger to arrive at the gate is the oversale and is not permitted to board. Selection is automatic. Do not delay the flight seeking a passenger who would be least inconvenienced.

¢ 6. Do not remove confirmed ticketed passengers already on board the flight from another station to clear an oversale.

Handling the Oversold Passenger

Try to separate the oversold passenger from other passengers; be patient, courteous, and tactful. Listen considerately; let the passenger talk.

Apologize for the inconvenience and interruption to his travel arrangements.

Explain the reason for the oversale

- Caused by an unintentional error made in confirming reservations for the flight. This type of error is infrequent; and unfortunately, impossible to rectify at this time. An oversale report is immediately submitted to our Central Reservations office, who investigates and follows up with the erring office which would be a travel agent, other airline, or one of our own offices.
- Or, equipment substitution. (Explain in as much detail as possible.)
- Or, weight restriction. (Explain in as much detail as possible.)

Remove the passenger's baggage from the flight.

Give oversold passenger copy of "Notice to Passengers Denied Boarding," Form SS-112.

There are many services which can be offered to the oversold passenger. These services are found in Section 6-99.

You must also offer Denied Boarding Compensation (DBC) to oversold passengers meeting certain conditions. See Section 6-99.

REPORTING AND INVESTIGATING OVERSALES

Who	Does What
Oversold Station	1. Complete an original and 3 copies of the Oversale Report Form SS-119 for each oversold passenger whether DBC is paid or not.
N	2. Call Central Res Control in PIT CRO, Ext. 271 or 262, and report the oversale.
	3. Retrieve a hard copy of the oversold passenger's PNR and PNR history using your 1977 agent set.
	4. Attach the copy of PNR and PNR history to the Customer Relations copy of SS-119.
	5. Give report to your Customer Service Manager.
Customer Service Manager	6. If no contact with the passenger at the time of the oversale: THEN call each oversold passenger unless you are positive he/she is satisfied with the explanation and alternate service provided. In either case, enter a brief summary on the back of the SS-119 and sign it. Examples: Passenger very irate. VIP. CSM called passenger at home, explained circumstances and apologized. Passenger very understanding. (signed) C.S.M.

continued . . .

REPORTING AND INVESTIGATING OVERSALES (CONT'D)

Who	Does What
Customer Service Manager	Examples: (cont'd)

Passenger was G.I. Couldn't care less about delay. Happy with $25.00.

(signed) C.S.M.

PSR Smith handled passenger. Passenger satisfied with alternate transportation.

(signed) C.S.M.

7. Distribute SS-119:

Original - Director of Reservations.
Copy #1 - Director of Customer Relations with copies of PNR and PNR history attached.
Copy #2 - Station file.
Copy #3 - Your Regional Director.

Submit completed SS-119's no later than 72 hours after the oversale occurs.

ERSALE REPORT SS-119

ATION		FLIGHT NO.	FLIGHT DATE
ME	(Last)	(First)	MRS. ☐ MISS ☐
DDRESS	(Street)	(City)	(State) (Zip Code)
ELEPHONE	(City)	(Number)	
CKET NO.	DATE AND PLACE OF ISSUE		FIRST FLIGHT SEGMENT

ERNATE ACCOMMODATIONS AND SERVICES PROVIDED

	COST

SPOSITION OF CONTINUING/RETURN SPACE

USE OF OVERSALE

	AMOUNT OF DBC PAID

STRIBUTION: ORIGINAL - DIRECTOR, RESERVATIONS
COPY 1 - DIRECTOR, CUSTOMER RELATIONS
COPY 2 - STATION FILE

PLAINTIFFS EXHIBIT 14–CORRESPONDENCE RE OVERSALES

[Letter to Allegheny]

May 2, 1969

The President
Allegheny Airlines, Inc.
Washington National Airport
Washington, D.C. 20001

Dear Sir:

I was scheduled with a confirmed reservation out of Washington National on your flight No. 864 last Tuesday morning, April 29, at 10:30 A.M. A vice president of our company and general counsel was scheduled out together with me on the same flight. We arrived at the airport and checked in at your main ticket counter upstairs in the main lobby at about 9:45 A.M. We were accepted on your flight No. 864, our bags checked, and we were told that the flight would leave from Gate No. 7 – gate time was noted to be 10:10 A.M.

We lingered around the main lobby for a short period of time, then proceeded on to Gate No. 7 arriving there about 10:15 A.M. We walked by the desk at the gate into the waiting room without being challenged by anyone although two attendants were at the desk at the time. We sat down in the waiting room and were advised by one of the attendants via the speaker system that Flight No. 864 was delayed and would now depart at 10:50 A.M.

We left the waiting room, walked down the hall and back, and reentered the waiting room – again not being challenged by either attendant. The flight had not been called at 10:45 so my associate went to the desk at the gate to inquire about the flight. He was asked for his ticket and called to me that I needed to present my ticket.

When I presented my ticket, quite a bit of confusion took place. I was finally told that due to an error by the computer the flight had been over sold. I was not allowed to board the flight, but I was told that I would be scheduled on a later flight that was to leave two hours later.

My associate and I were on a very tight schedule. We had a very important appointment scheduled at Springfield, Massachusetts, an appointment that was to last all afternoon. We had another appointment scheduled in Hartford, Connecticut the next morning that would carry until our departure time at 3:05 P.M. Wednesday for our return trip to Harlingen. Needless to say we were severely inconvenienced by the delay.

I was escorted back to the main lobby by your Mr. Henry Rouson. There I was offered a check in the amount of $29.60 for my inconvenience – that being the one-way fare from Washington to Bradley Field. Mr. Rouson asked me to endorse the check and he would pay me in cash, at the same time calling my attention to the wording that I would endorse. My endorsement would free Allegheny from further liability. I refused to endorse the check – thus ending our conversation.

I might add that I continued on to Bradley field, arriving for my appointment 3½ hours late. I would also like for you to know that I was treated at all times with courtesy and respect by Mr. Rouson and the rest of the personnel, for which I am grateful.

Yours very truly,

HYGEIA DAIRY COMPANY
By: Jas. H. Alexander

JHA:ld
cc: Mr. R. Ames
Customer Relations

[Letter from Allegheny]

CLOSED No. 59-47
May 08, 1969

Mr. James Alexander
Box 751
Harlingen, Texas

Dear Mr. Alexander:

Mr. Barnes has asked me to reply to your letter of May 02. May I extend a sincere apology for the inconvenience incurred.

We appreciate your taking the time to advise us of the circumstances related to your travel with us on April 29. A copy of your correspondence is being forwarded to our Vice-President of Customer Service for review in an effort to prevent recurrence.

Please accept the enclosed check for $29.60. This is paid to you because of our failure to accommodate you to your ticketed destination within two hours of your originally scheduled arrival time.

May I also add that it is a pleasure to relay your appreciative comments on our service to all concerned.

Thank you for allowing our review. We look forward to the opportunity to welcome you aboard many times in the future.

Sincerely,

R.S. Ames
Director, Customer Relations

RSA:ck
Enclosure
cc L.O. Barnes

bcc: P.D. Brennan—For your information. Thank you.

bcc: R.W. Bussen—Credit DBC for $29.60 per ticket no. 033-482-647-079. Thank you.

[Letter to Allegheny]

THE DEPUTY POSTMASTER GENERAL
Washington, D.C. 20260

June 11, 1969

Dear Mr. Barnes,

It is disturbing to me, to say the least, that I have had no explanation as yet from you as to the exceptionally poor service and treatment which my wife and I experienced with your company at the Hartford/Springfield Airport. This lack of any response is especially aggravating since the incident was called to your company's attention on June 2, 1969, by Mr. Batrus, my Executive Assistant, in direct phone contact with your Vice President, Mr. Brennan.

After having been confirmed and ticketed in advance for return to Washington on your flight 931, Sunday, June 1, 1969, and having again confirmed by phone to your station at Hartford at 8:00 a.m. on the day of departure, I was told on arrival a half-hour before flight time that no seats were available for me and my wife.

It was very important that I return to Washington at that time, and despite my plea for assistance in arranging transportation, even by charter if necessary, I received no cooperation whatsoever. In fact, I received only abrupt and discourteous disregard of my request by your personnel, and was put to the added inconvenience of having to arrange myself for a charter flight at a cost to me of $330.00.

I felt you should know this since I obviously must be concerned with the general quality of performance of certificated air carriers.

Sincerely,

/s/ E. T. Klassen
E. T. Klassen

Mr. Leslie O. Barnes
President, Allegheny Airlines
Hangar 12, Washington National Airport
Washington, D.C. 30001

[Letter from Allegheny]

October 17, 1969

Mr. F. E. Batrus
Executive Assistant to the
Deputy Postmaster General
Office of the Deputy Postmaster
General
Washington, D.C. 20260

Dear Mr. Batrus:

I first want to apologize for the inconvenience Mr. and Mrs. Klassen were exposed to when they attempted to travel with us on June 1st.

I have attached our customer relations adjustment check in the amount of $301 to cover their additional expenses.

I sincerely trust they their future travels with us will be most pleasant and should they incur any difficulty I would appreciate hearing from them.

Sincerely,

L. Thomas Ferguson

LTF:e
attach.
bcc: R.S. Ames
W.J. Meyers

[Letter from Allegheny]

September 16, 1969

Mr. John N. Hansson
12409 Braxfield Ct. No. 4
Rockville, Maryland 20852

Dear Mr. Hansson:

I am in receipt of a copy of your correspondence to Eastern Airlines regarding your decision not to pay for the air transportation provided by Allegheny between Hartford and Washington.

This is indeed distressing since the airlines are prohibited by law from providing free transport and must process for collection. I am hopeful that this reply to you will not require any action that may reflect upon your excellent credit status.

The oversale at Hartford was indeed unplanned, and I wish to assure you that Allegheny does not purposely oversell any flight. As evidenced by our paying $660.00 for the two Air Taxi Aircraft, our concern was to provide the air service to your destination promptly even though the value of all of the tickets for the passengers who were on the Air Taxi Aircraft was only $228.75. As you may note, it was indeed not only an expensive alternative service arrangement but assumed in the recognition that on Labor Day weekend alternate services were at a minimum.

I have determined that the first Air Taxi (N5844) arrived at the Page Airways gate (here at National Airport) at 7:45 p.m. Your Air Taxi (N6996L), after the short delay to service a switch, arrived at the Page Airways gate at 8:05 p.m.—or one hour and fifty-one minutes after flight 816. It is also my understanding that the Passenger Service

Representative who served you at Hartford called you at a later time at your home to again apologize for the service failure to you and to your wife.

I have enclosed my Customer Relations check for $10.00 in reimbursement of the dinner you obviously missed due to your delay of almost two hours.

Hopefully, previous experiences with our airline have established that this was an exception to our usual efforts.

Certainly, your continued patronage is desired.

Sincerely,

R.S. Ames
Director–Customer Relations

RSA:kg
Enclosure

bcc: EAL– I suggest a wait of 10 days and then a friendly reminder "collection" note in the tone of "we have received a copy of Allegheny's reply and knowing your check is enroute to us wished to add our apology for the incident experienced."

Thank you.

bcc: R.W. Bussen.

[Letter from Allegheny]

March 18, 1970

Mr. J. Henry Korson
Professor of Sociology
The Commonwealth of Massachusetts
University of Massachusetts
Amherst, Mass. 01002

Dear Mr. Korson:

This will acknowledge receipt of your letter of January 2. May I extend my sincere apology for the inconvenience incurred and for this unintentional delayed reply.

I can certainly understand your displeasure with us over this matter and I agree that the oversale of this flight or any other flight is not the kind of service our valued customers deserve. Please be assured that each and every oversale is investigated with corrective action instituted in an effort to prevent recurrence.

I have thoroughly reviewed the reports submitted on this matter by our managers at both Hartford and Providence. The flight was actually oversold by six passengers. At the last minute before departure, it was discovered that there was still one empty seat and the first oversold passenger was immediately boarded. After the flight departed, our Passenger Service Representative discovered that a Marine had failed to board the flight after checking-in for personal reasons not known to us.

All oversold passengers were boarded on Flight 966 to Baltimore, and a limousine was provided to National Airport in Washington. Since it did not arrive within the two hour time limit as required by Civil Aeronautics Board regulations regarding oversales; denied boarding compensation was paid to each oversold passenger involved.

Oversales are few when compared to the number of departures even though any of the thirty-eight major airlines and more than 5,000 travel agencies (world-wide) can sell space on Allegheny. However, through human or computer error if we are not properly advised, our total number of commitments do occasionally exceed our total number of seats available.

According to our records your son's tickets and those of a Mr. LaBella were confirmed and issued by Eastern Airlines at Charlotte, North Carolina. There were several other passengers who also held confirmed tickets for this flight for which we show no records.

While you are correct that Allegheny does provide the majority of the flights serving Hartford, may I emphasize that Allegheny is not the only carrier permitted by the Federal Aviation Administration and the Civil Aeronautics Board to operate this route.

Again, my sincere apology for the inconvenience incurred by your son. I sincerely hope that your travels with us since this time have been in evidence of our desire to properly serve you.

Sincerely,

ALLEGHENY AIRLINES
R.S. Ames, Director
Customer Relations

RSA:rce
cc Civil Aeronautics Board
–Your file no. 70-158.
Thank you.
Senator Edward Kennedy
Senator Edward Brooke
Mr. Ralph Nader
Congressman Sylvio Conte
bcc: L.T. Ferguson/J. Jenkins
E.I. Colodny P.D. Brennan

[Letter to Allegheny]

45 Westbrook Street
Hartford, Conn. 06106
March 1, 1970

Allegheny Airlines
Washington National Airport
Washington, D.C.

Dear Sirs,

I am writing with reference to an unfortunate experience that I had while attempting connections via Allegheny Airlines from Bradley International and Washington National on February 22nd. Having made reservations on flight 816 I had arranged connections from Washington to Charlottesville, Virginia in accordance with the expected time of arrival of flight 816.

As a result of what had appeared to be a situation of just too many reserved tickets being sold for the flight, there were at least ten other individuals along with myself that were not allowed to make flight 816.

I am not in a habit of writing notes of complaint, but I was surprised to have this happen to me while attempting connections with Allegheny. I do an extensive amount of traveling by air and I must say on any of my previous flights with your airline have been most enjoyable. It was just that as a result of the difficulty that I experienced I missed an important meeting and incurred additional expense in having to extend my trip several days to accomplish my duties.

Sincerely,

/s/ Demetrios Tsacoyeanes
Demetrios Tsacoyeanes

[Letter from Allegheny]

TSACOYEANES Closed 30-250

- - - for bringing to our attention the experiences encountered on your recent trip between Hartford and Washington, D.C.

May I extend my sincere apology for the inconvenience incurred as a result of this oversale. I have reviewed our records regarding this matter and have determined that your reservations were cancelled as a result of late check-in at the ticket-lift position. Therefore, I am unable to forward any denied boarding compensation.

I hope your future travels will again include Allegheny and satisfaction with our services will warrant your continued patronage.

Sincerely,

/s/ R.D. Meade
R.D. Meade, Supervisor
Customer Relations

3/23/70

[Letter to Allegheny]

Miss Rhoda Goldberg
620 21st St. N.W.
Rm 504
Washington, D.C. 20006

Mr. Richard Ames
Director of Customer Relations
Allegheny Airlines, Inc.
National Airport
Washington, D.C. 20001

Dear Mr. Ames:

On Sunday Feb. 22, I arrived at Bradley Field (Hartford, Conn.) at approximately 4:45 P.M. to catch Allegheny Flight No. 816 leaving at 4:59 P.M. & arriving at 6 P.M. at National Airport. I had purchased a round trip ticket at the American Security Building at 21st & Pennsylvania Ave. N.W. on Thurs. Feb. 19 – I had gone out of my way to do this just so that I would encounter no difficulties in the course of my travels . . . little did I know what was in store for me! Upon arriving at the gate, a Mr. Rickey nonchalantly told me he was sorry, but the flight was full, and since I had not been within the gate of the departing flight ten minutes prior to take off (which I was!) he could not accommodate me at all!! This information was not printed on the ticket in any place whatsoever – I had specifically read it to see if there were any directions I would have to follow since I already held my ticket . . . It is only printed on the first page of your schedule . . . No one had ever pointed this out to me, and I had never at any time been made aware of this provision!! The next flight was 8:09 so I had to spend three hours in the "pleasant" atmosphere of Bradley Field . . . it was not a direct flight so it took two hours instead of one . . . and I had to suffer the uncomfortable feeling I get from not one, but two take offs and landings . . . . my luggage was on the first flight, which did not add to a pleasant mental state . . . and someone was awaiting me at National who nearly panicked since I could not reach him. . . .

Mr. Ames, is this anyway, to run an airline?? . . . I would appreciate being reimbursed for my time and aggravation, merely caused because your airline overbooked a flight which I felt had assured me of passage . . . . I do a great deal of travelling on Allegheny . . . . so before I delve into the legal aspect of such a situation, I would appreciate your reimbursing me for this flight.

Sincerely,

/s/ Rhoda Goldberg

[Letter from Allegheny]

GOLDBERG, RHODA Closed

- - - for writing and for your patience with us.

Enclosed is my customer relations check for $25 equal to the denied boarding compensation payment.

I hope all other travels with us have been as desired and without a similar inconvenience. We do indeed desire your continued patronage.

Sincerely,

R.S. Ames, Director
Customer Relations

3/31/70

BCC: E.I. Colodny/P.D. Brennan – We had 107 for 100 passenger flight. We cancelled on 10 T/L *to correct our error.* Per passenger, she arrived prior to 10 T/L.

[Letter from Allegheny]

May 1, 1970

Dr. Paul Weiner
Associate Professor of Economics
The University of Connecticut
Storrs, Connecticut 06268

Dear Dr. Weiner:

Thank you for providing me with a copy of your April 24 letter to the Federal Aviation Administration. Although you will undoubtedly receive a response from that office, I appreciate the opportunity to respond – especially in view of the unfortunate circumstance which prompted you to write.

First of all – I deeply regret the fact that you were denied a seat on one of our March 19 flights to Washington. At this writing I am not familiar with the circumstances of that flight. In today's computerized environment, this should not have happened and we are probably more interested in the cause than even you are.

Next, I am privileged to respond briefly to the questions posed in your letter:

(1) Northeast, American, Eastern, TWA and Allegheny Airlines are all certificated to provide nonstop service in the Hartford-Washington market. For reasons with which I am not familiar, only Eastern and Allegheny provide nonstop service; the bulk of which is provided by Allegheny.

(2) Competition invariably breeds efficiency, although it doesn't always improve costs. More importantly perhaps – particularly in a service com-

pany such as ours – competition tends to improve personnel performance. Your observation suggests that you might have had an unsatisfactory experience on Allegheny on another occasion.

(3) I am not certain that I understand your third question. Airline accounting procedures require conformance in all cases to the Civil Aeronautics Board System of Accounts. Internally, for tax purposes or other reasons, the ultimate report may vary from the procedure. Depreciation is, of course, a major cost factor, and does vary from one airline to another. For the most part, the schedules used reflect a corporate judgment as to the useful life of the equipment. Generally speaking, jet aircraft are depreciated over a 12-15 year span to a residual value of 15 per cent; propeller aircraft are usually 10 years or less, also to a 15 per cent residual.

(4) I am not clear as to your last question. Specifically, I do not understand how high managerial expenses could mask low earnings; I would think the reverse would be true. I suggest that an airline's Breakeven Load Factor (the percentage of seat occupancy required to break even) would be a better criterion. In other words, a higher-than-average breakeven requirement might indicate the tendency you appear to be seeking. In this connection, regard Allegheny, Continental, Northwest and National who are at or slightly below a 40 per cent requirement; the industry average is currently around 45 per cent, I believe.

I trust the foregoing will answer, in part, your questions. Again, I am most sorry that your experience (perhaps your first) with Allegheny was an unpleasant one. I trust your next flight with Allegheny will demonstrate that your experience was, in fact, unusual.

Sincerely,

L. O. Barnes

LOB:jih

cc: Mr. John Dregge, Director
Office of Community & Congressional Relations
Civil Aeronautics Board

Mr. John Shaffer, Administrator
Federal Aviation Administration

bcc: Mr. E.I. Colodny
Mr. L.T. Ferguson/Mr. R.S. Ames

[Letter from Allegheny]

January 11, 1971

Dr. Paul Weiner
Associate Professor of Economics
Department of Economics
The University of Connecticut
Storrs, Connecticut 06268

Dear Dr. Weiner:

Thank you for your letter of December 30 concerning the Denied Boarding Compensation paid you on March 19 at the time of the oversale incident.

I believe the newspaper article enclosed with your letter has a misleading headline which may cause some misunderstanding. In the article itself, however, it does state, "Fed-

eral regulations state that any passenger bumped despite holding 'confirmed reserve space' is entitled to a refund plus an equal penalty payment . . ." In your instance you were rebooked on an Eastern flight to Baltimore plus a taxi to Washington payment for which was via your original ticket for the Allegheny flight. As you noted, the Denied Boarding Compensation amount of $30 was also paid to you which amount equalled the one way fare between Hartford and Washington at that time. Had you decided to *not* make the trip to Washington at all, then you would have been entitled to a full refund on your ticket *plus* the Denied Boarding Compensation.

We at Allegheny find oversales to be most distressing for us as we know them to be for our passengers. In this connection in August of 1970, Allegheny introduced a computerized name and flight reservation system and this has reduced the number of oversale incidents considerably. Enclosed is a copy of our "Air Commuter" magazine describing this system starting on page 8.

Please be assured of our continuing efforts to offer the best service possible to our passengers.

Sincerely,

L. O. Barnes

Encl.
bcc: Mr. L.T. Ferguson/Mr. R.S. Ames

DEFENDANT'S EXHIBIT A

(6-31C)

DON W. CROCKETT
ATTORNEY AT LAW
Suite 880
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006
June 19, 1972

Mr. Edwin I. Colodny
Executive Vice President
Allegheny Airlines
Washington National Airport
Washington, D.C. 20001

Dear Mr. Colodny:

Enclosed herewith for your information is a copy of a complaint resulting from the dishonoring of a reservation for Mr. Nader by your company on April 28, 1972. The complaint fully sets forth the facts surrounding the incident. We intend to file this complaint on Friday, June 23, 1972.

We are also returning herewith your company's draft dated April 28, 1972 in the amount of $32.41 which we reject as a wholly inadequate offer of settlement.

Recent CAB statistics reveal that the airline industry is apparently unwilling to take the steps necessary to eliminate the oversales of their flights, a problem which has plagued consumers for many years and which remains a matter of serious public concern.

If you are interested in discussing the settlement of this matter before the complaint is filed, please let me know before June 23, 1972. We anticipate that any such settlement would include an assurance on Allegheny's part that it would take immediate steps to eliminate overbooking and oversales.

I have been delayed in moving to the above address and can be reached at 1001 Connecticut Ave., Suite 800, Telephone: 628 7234.

Sincerely,

Don W. Crockett

Don W. Crockett

cc Ralph Nader
C.C.A.G.

Exhibit A

DEFENDANT'S EXHIBIT D – CAB NOTICE EDR-109

STRATTON
EDR-109

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Docket 16561
Dated: January 10, 1967

PART 221 - CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

PART 250 - PRIORITY RULES, DENIED BOARDING COMPENSATION TARIFFS AND REPORTS OF UNACCOMMODATED PASSENGERS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Civil Aeronautics Board has under consideration an amendment to Part 221 and a proposed new Part 250 of the Economic Regulations. The new Part would require carriers to establish and file with the Board priority rules for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight. In addition, the amendment to Part 221 and the new Part 250 would require carriers to file tariffs providing specified denied boarding compensation to such passengers. Finally, the new part would require carriers to file reports of unaccommodated passengers.

The principal features of the proposed amendment to Part 221 and the new Part 250 are set forth in the Explanatory Statement, and the proposed amendment and new part are set forth in the Proposed Rules. These regulations are proposed under the authority of sections 204(a), 403, 404, and 411 of the Federal Aviation Act of 1958, as amended (72 Stat. 743, 758, 760, and 769; 49 U.S.C. 1324, 1373, 1374, and 1381), and section 3

Exhibit D

of the Administrative Procedure Act (80 Stat. 383; 5 U.S.C. 552).

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D. C. 20428. All relevant matter in communications received on or before February 16, 1967, will be considered by the Board before taking final action on the Proposed Rules. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 710 Universal Building, 1825 Connecticut Avenue, N. W., Washington, D. C., upon receipt thereof.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

EXPLANATORY STATEMENT

On October 12, 1965, the Board issued a notice of proposed rule making, EDR-95, 1/ to consider a proposed new Part 250 providing for notice and other requirements with respect to overbooked flights. In addition, the notice advised that the Board has under consideration certain amendments to Part 221, which would require carriers subject to Part 250 to include in their tariffs their criteria, practices and rules for determining passenger priorities applicable to instances where confirmed reservations exceed the capacity of the aircraft on a scheduled flight. The notice afforded an opportunity to interested parties to participate in the proposed rule making through submission of their views or arguments.

The Air Transport Association of America (ATA) has consolidated and submitted comments of 31 air carriers. In addition, supplemental comments have been submitted by a number of carriers. 2/ The carriers unanimously oppose the rule proposed in EDR-95, particularly the provisions of the new Part 250 requiring notice to passengers of an overbooked condition. Upon consideration of these objections, and of other factors hereinafter set forth, the Board is hereby proposing alternative regulations to deal with the problem.

1/ Docket 16563; Part 221 - Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers; Part 250 - Notice and Other Requirements of Overbooked Flights.

2/ Alaska Coastal-Ellis Airlines, Northern Consolidated Airlines, and Wien Alaska Airlines, jointly; Ozark Air Lines; Pan American World Airways (supported by Pan American-Grace Airways); Trans Caribbean Airways; Trans-Texas Airways; Trans World Airlines; and United Air Lines.

The Board has for some years been concerned with the problem of oversales - the failure of air carriers to accommodate at flight departure time passengers holding confirmed reserved tickets on the flight on the ground that space is not available. 3/ While the number of passengers holding confirmed reserved space who are denied boarding is not large relative to total enplanements, in absolute terms the number is substantial. Thus, evidence submitted by the carriers in the Overbooking Practices of Trunkline Carriers' Investigation, Docket 11683, and information received thereafter, indicate that in each of the years 1963 and 1964 approximately 50,000 passengers with tickets for confirmed reserved space were denied boarding on flights in domestic trunk and local service.

The oversales problem, therefore, is a severe one. It causes distress, inconvenience and damage to passengers. It impairs the public image of air carriers, casting doubt on the integrity of their reservations practices. Clearly, it is incumbent on the Board and the carriers to do all within their powers to eliminate oversales to the extent feasible.

The crux of the carriers' comments, as submitted by ATA, is that the proposed notification rule (1) would be largely unworkable; (2) would create anxiety and confusion on the part of the traveling public, severely weakening public confidence in air carrier reservations systems;

3/ Strictly speaking an oversale also occurs when a passenger is not accommodated in the class of service for which he holds confirmed reserved space, but is seated in a lower class of service ("downgraded") or a higher class ("upgraded"). However, this type of oversale presents a far less severe problem.

(3) would increase unnecessarily, and at an undue cost to the industry, the already-heavy workload which must be handled within extremely narrow tolerances by airline reservations systems; (4) would cause the public to make a great number of duplicative and protective reservations; (5) would increase the already rapid turnover of reservations within the last 12-24 hours before departure; and (5) would increase the troublesome "no-show" and late cancellation problems.

In light of carrier comment and other considerations, the Board has tentatively determined not to finalize EDR-95. Rather, we propose to deal with the oversales problem by other means for the following reasons: (1) the proposed notice requirement of EDR-95 would have necessitated substantial changes in the reservations practices and systems of carriers, and the Board is not prepared to require such changes in a system which has, on balance, worked reasonably well in the public interest; (2) various measures are available to the carriers to reduce the dimensions of the oversales problem by limiting or curtailing certain aspects of their reservations practices; (3) finally, the Board believes the oversales problem can be substantially reduced by the proposals herein to require carriers (a) to make prompt, effective and adequate compensation to oversold passengers, (b) to establish priority rules for determining which passengers holding confirmed reserved space shall be denied boarding on oversold flights, and (c) to file reports of unaccommodated passengers. These matters will next be discussed seriatim.

1. As indicated above, the primary thrust of EDR-95 was directed toward the practice of carriers of deliberate or controlled overbooking. This practice stems from the fact that there is substantial reservations turnover before flight departure time occasioned by changes in passengers' plans and cancellation of their reservations. In addition, the practice is used to allow for multiple reservations made by some passengers and for "no-shows" - passengers who neglect to cancel reservations they do not intend to use. Reservations turnover can be projected and compensated for by booking in excess of the capacity of the aircraft to a predetermined extent. By carefully controlling overbooking in this manner on certain flights, carriers can reduce the chance of aircraft departing with empty seats. At the same time, through the carriers' acceptance of reservations in excess of inventory, passengers are able to secure space on flights which can in fact accommodate them and are also benefited by being offered maximum flexibility in securing, cancelling and changing reservations without charge or penalty. However, where carriers overestimate reservations turnover on a particular flight, overbooking can result in oversales and passengers holding confirmed reserved space are denied boarding.

The carriers, however, contend that overbookings alone do not cause oversales nor are they even the chief cause of oversales. In support of this position ATA has submitted the results of special surveys conducted by four carriers as follows:

	Boarded	Overbookings	Oversales
Carrier "A" (1 day)	45,000	700	8
Carrier "B" (2 days)	22,000	323	11
Carrier "C" (5 days)	125,000	635	3
Carrier "D" (48 days)	51,273	70	2

In the cases of Carriers "B" and "D", it is stated none of the oversales were attributable to the overbookings and in the cases of "A" and "C" the overbookings were only a contributing factor.

There is nothing in the substantial body of data before the Board which controverts the carriers' claim that overbooking is not the major cause of oversales. Among other causes of oversales are reservations practices such as "free-sale" and "block ticketing". In addition, oversales are caused by such factors as (1) substitution of lower capacity aircraft because of maintenance or other operational consideration; (2) errors committed by personnel of the carrier denying boarding to the passenger, by personnel of other carriers, and by travel agency personnel; (3) breakdowns or defects in communication, computing and other equipment used in processing reservations.

It is also apparent that the notice requirement of EDR-95 would not only have the effect of controlling the practice of deliberate overbooking. The effect of the notice would be to seriously curtail the practice. Thus, carriers would not overbook if they were required to advise passengers of their overbooked status twelve hours prior to flight time in view of the

resultant confusion, alarm, bitterness and cancellation of reservations. In this connection, it is to be noted that the table set forth above shows that there were a total of 1,728 overbookings and only 24 oversales or less than .0140 percent of overbookings. Had the requirement proposed in EDR-95 been in effect, it is manifest that a very sizeable number of persons would have been needlessly alarmed by the notification of their overbooked status and that reservations would have been canceled on flights which actually could have accommodated these passengers. Further, were the carrier prevented from overbooking, large numbers of passengers would be denied reservations on flights which, because of reservations turnover and "no-shows," would depart with empty seats.

In our view, any realistic appraisal of the practice of overbooking leads to the conclusion that, while it results in oversales, it also contributes to flexibility and freedom in securing, changing and cancelling reservations. Thus, any rigid controls over overbooking, as now practiced, would inevitably lead to restrictions on privileges which contribute greatly to the convenience of air transportation, and have come to be relied upon by the traveling public. In addition such controls would reduce load factors, and the additional cost would ultimately have to be borne by the traveling public.

In light of the above, it can be seen that the present reservations systems of the carriers in general benefit the traveling public. The

Board is not prepared, therefore, to require changes in these systems without fully exploring other means by which the oversales problem may be curbed. Moreover, the reservations practices of the carriers involve detailed methods of doing business, personnel supervision, use of equipment, adaptation to technological change, etc., requiring a high degree of management flexibility and freedom. Since these matters are within the special province and competence of carrier management, it is desirable that the Board attempt to minimize to the extent possible regulation of the details of the carriers' reservations systems. But by the same token, it is incumbent on the carriers themselves to take effective steps to curb oversales resulting from their reservations practices. Obviously, if efforts by the carriers in this direction are inadequate, the Board may be compelled to regulate these practices toward this end.

2. In connection with the foregoing, there are two reservations practices of carriers, in addition to overbooking, which contribute to oversales. First, are "free-sale" privileges, a reservations procedure established by agreement whereby the participating carrier can sell space on another carrier without any prior clearance or check of inventory up to a specific time before departure. This procedure is particularly used with respect to participating foreign carriers with offices located outside the United States. Second, are "block ticket" arrangements, by which persons which are given the ticket stock of a carrier can validate tickets which on their face purport to confirm reservations when in fact such reservations were not confirmed by the carrier.

"Free sale" and "block ticketing" no doubt reduce carrier reservations costs and increase flexibility and facility of securing reservations for the traveling public. Nevertheless, these practices not only contribute to oversales but they in fact invite oversales. This is an area over which the carriers have control, and the carriers have, in our judgment, a clear duty to take steps to drastically reduce the opportunities for oversales resulting from these practices. A recent resolution of ATC, 1/ is a measure toward this end which could and should be advanced further.

Similar observations can be made concerning the problem of "no-shows," which one carrier assigns as "the real problem" with respect to oversales. There may well be economic pressures on carriers to overbook in order to compensate for no-shows, as well as for reservations turnover. However, it is within the means of the carriers to reduce the number of no-shows through reservation service charges. The Board has expressed its belief in the desirability of reservation and no-show controls and previous

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1/ On April 20-21, 1966, the Air Traffic Conference of America adopted certain resolutions concerning Standard Interline Passenger Procedures to be effective June 3, 1966. One of these resolutions provides that carrier members shall not enter into free sales agreements on flight segments operating within the Continental United States, "when the selling offices have access to that Member's availibility by means of local or toll free telephone or manually maintained or computer stored availability." In addition the resolution provides that free sale shall not be granted to travel agents. (By Order E-24516, December 14, 1966, this resolution, and others designed to strengthen the carriers' reservations procedures, were approved.) However, the substantial number of free sale arrangements involving international flights remains unaffected by the resolution.

experiments with no-show penalty assessments have given graphic evidence of their salutary effect on the problem. 5/ However, no-show assessments were abandoned by the carriers and have not been in effect since January 31, 1963. Aside from causing serious economic loss to the carriers, the problem of no-shows results in substantial inconvenience to the traveling public in being denied reservations through the thoughtless action of those passengers who book more space than they intend to use. The carriers' failure to curb this practice is a matter of concern to the Board, and they are urged to take corrective steps such as the establishment of an appropriate reservations charge. 6/

3. It is apparent from the foregoing that the present reservations system of the carriers is designed to provide maximum benefits for the traveling public and to reduce the carriers' reservations costs. However, these ends are achieved at a price of substantial inconvenience and hardship to those relatively few passengers who are oversold and denied boarding although holding confirmed reservations. Our present determination not to attempt detailed control of reservations practices at this time is premised upon the carriers' effecting a substantial improvement in the treatment of oversold passengers.

In our judgment, the compensation provided in carriers' tariffs as liquidated damages for failure to accommodate passengers with confirmed

5/ See Order E-20859.
6/ The imposition of a charge should not, however, result in a higher fare level.

reserved space falls far short of being adequate. 7/ Data furnished by eleven trunk carriers show that for the twelve months ending August 31, 1965, of the 37,184 passengers denied confirmed space, 22,482 were qualified for denied boarding compensation. Of this total, 19,772 passengers actually accepted such compensation and received an average of only $20.00 per incident. Furthermore, we do not believe that the present denied boarding tariff is completely equitable, as it is primarily limited to domestic transportation.

In view of the above, it seems clear that the compensation provided in the tariff is inadequate to compensate passengers for the inconveniences

7/ These amounts are as follows:

Value of first remaining flight coupon for which space is confirmed on departed flight	Amount of Compensation
$1.05 - $5.00	Full value of the first remaining flight coupon $5.00
$5.05 - $10.00	50% of the value of the first remaining flight coupon $10.00
$10.05 - $80.00	
$80.05 and over	

arising from oversales. We cannot directly attack such causes of oversales as substitution of equipment or errors of personnel of the carriers[8] or their travel agents. With respect to the reservations practices of the carriers responsible for oversales, however, we conclude that these practices must either be regulated by the Board or that the denied boarding passengers be offered reasonable compensation. In other words, we shall permit the above-described reservations practices to continue without regulation on condition that the carriers file tariffs providing prompt, effective and adequate compensation to denied boarding passengers, as proposed herein.[9]

The proposed rule will require denied boarding tariffs to be filed by all carriers holding a certificate under section 401(d)(1) and (2) of the Act authorizing the transportation of persons, except a helicopter operator, or a carrier conducting intra-Alaska service exclusively.[10] The rule will apply to flights or portions of flights originating or terminating in the United States, its territories or possessions, but excludes flights originating and terminating within Alaska. The required tariffs will provide for compensation to eligible passengers at the rate of 200 percent of the value of the first remaining flight coupon with a $50.00

8/ With respect to human error, greater use of computerization offers opportunities for its reduction. The Board is gratified to note the great strides the industry has made and is making toward computerization of its reservations systems.

9/ Since comments on the supplementary proposal herein may govern the disposition of the 12-hour notice requirement proposed in EDR-95, we shall not withdraw the latter at this time.

10/ The latter are excluded because oversales have not been a problem with them.

minimum and a $200.00 maximum. The conditions under which passengers are eligible for compensation are set forth in the rule. The compensation, if accepted by a passenger, shall constitute liquidated damages for the carrier's failure to provide him with confirmed reserved space. The rule will require carriers to tender passengers eligible for denied boarding compensation, on the date and place the denied boarding occurs, a draft for the appropriate amount of compensation with the reverse side of the draft containing a waiver from liability. The carrier shall allow such passengers at least 30 days within which to endorse and cash the draft.

Carriers will be required to furnish passengers denied boarding a written statement explaining the terms, conditions and limitations of the denied boarding compensation.

4. In addition to providing reasonable compensation to denied boarding passengers, the proposed rule will require carriers to establish priority rules for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight.

EDR-95 required that the priority rules be stated with "particularity and definiteness." The ATA and individual carrier comments interpret this language as requiring "inflexible" priority rules. It is pointed out that the carriers, individually, already have in their company manuals established guidelines for company personnel responsible for the accommodation of overbooked passengers. These guidelines, however, permit a degree of

flexibility in their application so that when it is necessary to deny boarding to a passenger, it is possible to consider all passenger service factors and thus choose the passenger who would be least inconvenienced by such denial and for whom alternative reservations are available.

In view of these comments, the proposed rule will not require inflexibility in the carriers' priority rules. It will require that the priority rules not result in unjust discrimination or undue or unreasonable prejudice or disadvantage to persons. Assuming that the "guidelines" in company manuals do not have the latter results, it appears that the carriers have substantially conformed to the requirements of the proposed rule.

In addition, EDR-95 proposed to amend Part 221 of the Economic Regulations by requiring carriers subject to Part 250 to file in their tariffs the criteria, rules and practices for determining which passengers with tickets for confirmed space on a specific scheduled flight are to be boarded on aircraft not able to accommodate all passengers with tickets for confirmed reserved space. The comment specifically addressed to the amendment of Part 221 is that priority rules reflecting flexibility are not proper tariff material. We agree that the flexibility required in the priority rules would make them inappropriate as tariff material. We shall, instead, require the carriers to file copies of their priority rules with the Board.

5. Finally, the proposed rule will require carriers to file reports regarding the number of unaccommodated passengers for specified markets, quarterly, and for their respective systems, monthly. The latter will be similar to reports submitted by carriers pursuant to Orders E-20859 and E-21187. Carrier comments submitted by the ATA, as well as individual carrier comments, have suggested the filing of such reports as an alternative to EDR-95. It has been the Board's experience in the administration of Part 234 of the Economic Regulations concerning realistic scheduling, that the reports required and the attendant publicity have created powerful incentives to improved performance in that area. We expect similar results through the reporting of unaccommodated passengers.

PROPOSED RULES

The Civil Aeronautics Board proposes to issue a new Part 250 (14 CFR 250) as follows:

PART 250 - PRIORITY RULES, DENIED BOARDING COMPENSATION TARIFFS AND REPORTS OF UNACCOMMODATED PASSENGERS

Sec.

250.1 Definitions.
250.2 Applicability.
250.3 Priority rules.
250.4 Filing of denied boarding compensation tariffs.
250.5 Amount of denied boarding compensation and exceptions.
250.6 Denied boarding compensation as liquidated damages.
250.7 Denied boarding compensation drafts.
250.8 Written explanation of denied boarding compensation.
250.9 Reports of unaccommodated passengers.

§250.1 Definitions.

For the purposes of this Part:

"Carrier" means an air carrier, except a helicopter operator or an air carrier conducting intra-Alaska service exclusively, holding a certificate issued by the Board pursuant to section 401(d)(1) and (2) of the Act, authorizing the transportation of persons.

"Confirmed reserved space" means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket, as being reserved for the accommodation of the passenger.

"Stopover" means a deliberate interruption of a journey by the passenger, agreed to in advance by the carrier, at a point between the place of departure and the place of destination.

"Value of the first remaining flight coupon" means the applicable one-way fare, including any surcharge, less any applicable discount.

§250.2 Applicability.

This part applies to all carriers as defined in §250.1 and applies to flights or portions of flights originating or terminating in the United States, its territories or possessions, but excludes flights originating and terminating within the State of Alaska.

§250.3 Priority rules.

Every carrier shall establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight. Every carrier shall file with the Board two copies of such rules and criteria, including that portion of its company manual instructing employees on the order of boarding priorities in case of an oversold flight. Such rules and criteria shall not make, give or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§250.4 Filing of denied boarding compensation tariffs.

Every carrier shall file tariffs providing compensation to a passenger holding confirmed reserved space who presents himself for carriage at the appropriate time and place, having complied fully with the carrier's requirements as to ticketing, check-in and reconfirmation procedures and being acceptable for transportation under the carrier's tariff, and the flight for which the passenger holds confirmed reserved space is unable to accommodate the passenger and departs without him.

Note: See §221.38(a)(7), the tariff provision for filing denied boarding compensation tariffs.

§250.5 Amount of denied boarding compensation and exceptions.

The tariffs required by this part shall provide for compensation to be paid a passenger holding confirmed reserved space, as described in §250.4, at the rate of 200 percent of the value of the first remaining flight coupon with a $50.00 minimum and $200.00 maximum. Provided, however, that a passenger shall not be eligible for such compensation if:

(a) the flight for which the passenger holds confirmed reserved space is unable to accommodate him because of Government requisition of space;

(b) the carrier arranges for alternate means of transportation, which at the time such arrangement is made, is planned to arrive at the passenger's next point of stopover earlier than, or not later than one hour after, the time the flight, for which confirmed reserved space is held, is planned to arrive; or

(c) the passenger is accommodated on the flight for which he holds confirmed reserved space, but is offered accommodations or is seated in a section of the aircraft other than that specified in his ticket at no extra charge, provided that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund.

§250.6 Denied boarding compensation as liquidated damages.

The tariffs required by this part shall specify that the carrier will tender, on the day and place the denied boarding occurs, compensation in the amount specified above, which, if accepted by the passenger, shall constitute liquidated damages for all damages incurred by the passenger as a result of the carrier's failure to provide the passenger with confirmed reserved space.

§250.7 Denied boarding compensation drafts.

Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, a draft for the appropriate amount of compensation provided in §250.5, and the reverse side of such draft shall include a release stating that when the draft is endorsed by the passenger, the passenger thereby relieves the carrier from liability for all claims for damages which might accrue to the passenger as a result of the carrier's failure to provide the passenger with space on the flight in question, provided that the draft is endorsed and paid within 30 days of the date on which the denied boarding occurs.

§250.8 Written explanation of denied boarding compensation.

Every carrier shall furnish passengers who are denied boarding on flights on which they hold confirmed reserved space, immediately after the denied boarding occurs, a written statement explaining the terms, conditions and limitations of the denied boarding compensation provided by this part. Each carrier shall file three copies of the statement with the Bureau of Operating Rights, and the statement shall include the following language:

"Tariffs filed by this carrier with the Civil Aeronautics Board provide denied boarding compensation to a passenger holding confirmed reserved space where the flight for which the passenger holds such space is unable to accommodate him and departs without him.

"Passengers eligible for denied boarding compensation shall be compensated at the rate of 200 percent of the value of the first remaining

flight coupon on their tickets with a $50.00 minimum and $200.00 maximum. The carrier is required to tender to each such passenger, on the day and place the denied boarding occurs, a draft in the amount specified above which, if endorsed and paid within 30 days, shall relieve the carrier from liability for all claims for damages which might accrue to the passenger as a result of the carrier's failure to provide the passenger with space on the flight in question.

"In order to qualify for such compensation, a passenger must have complied fully with the carrier's requirements as to ticketing, check-in and reconfirmation procedures and be acceptable for transportation under the carrier's tariff. However, a passenger is not eligible for compensation if (a) the flight for which the passenger holds confirmed reserved space is unable to accommodate him because of Government requisition of space; (b) the carrier arranges for alternate means of transportation, which at the time such arrangement is made, is planned to arrive at the passenger's next point of stopover earlier than, or not later than one hour after, the time the flight, for which confirmed reserved space is held, is planned to arrive; or (c) the passenger is accommodated on the flight for which he holds confirmed reserved space, but is offered accommodations or is seated in a section of the aircraft other than that specified in his ticket at no extra charge, Provided, that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund."

§250.9 Reports of unaccommodated passengers.

Carriers shall file reports, in the form attached hereto as Appendix A, with respect to the applicable markets specified hereafter, of the total number of revenue passengers boarded and the number of unaccommodated passengers in three categories: denied boarding on aircraft, downgrades, and upgrades. The markets for which such reports shall be filed are those for which on-time reporting is filed in accordance with Part 234 of the Board's Economic Regulations and, in addition, New York-San Juan and Los Angeles/San Francisco-Honolulu. Local service carriers shall, in addition to reports which may be required by Part 234, file such data for the five top-ranking markets of each. The reports shall cover the third month in each calendar quarter and shall be filed within 45 days after the month covered by the report. In addition, carriers shall file, on a monthly basis, the information requested in Appendix B. These reports may be on a system basis or limited to those stations accounting for 67 percent of the carrier's total enplanements, or the top 15 stations, whichever number is greater. The information in Item 4 shall be limited to the passengers enplaned at the reported stations and not the system total. Further, a list of the stations included should be appended to each report. These reports are to be submitted by the 30th of the month following each monthly reporting period. Those carriers with both domestic and international operations shall file separate reports for each.

The Civil Aeronautics Board also proposes to amend Part 221 of the Economic Regulations (14 CFR Part 221) as follows:

By amending §221.38(a) by adding a new paragraph (7) as follows:

§221.38 Rules and regulations.

(a) Contents

* * * * *

(7) Denied boarding compensation. For carriers subject to Part 250, denied boarding compensation as specified in Part 250.

Appendix A

UNACCOMMODATED PASSENGER REPORT

Carrier _____ Denied Boardings 1/ _____, 19__

City Pairs (Nr Direction)	Qualified for Compensation	Exceptions per Tariff Rule 2/	Nonresident	Unresident	Total Enplaned Passengers

Note: Carriers will report only nonstop flights on this form.

1/ Number of passengers denied space on flights for which they held a valid ticket.

2/ a. Government requisition of space; b. arrangement for alternate means of transportation for passenger which, at the time such arrangement was made, was planned to arrive at the passenger's next point of stop-over not later than one hour after the time of the flight, for which confirmed reserved space was held, was planned to arrive; c. passenger accommodation on the flight for which he held confirmed reserved space, but was seated in a section of the aircraft other than that specified by the ticket.

Appendix B

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

REPORT OF PASSENGERS DENIED CONFIRMED SPACE

TO BE FILED WITHIN 30 DAYS AFTER TERMINATION OF EACH MONTH

Carrier _____ Month of _____, 196_

		No. of Passengers
1. Passengers who received compensation in accordance with Rule , or Rule of Agent C. C. Squire's CAB No. or subsequent similar tariff rule		
2. Passengers who qualified for compensation in accordance with Rule , or Rule (3) of Agent C. C. Squire's CAB No. but did not accept or were not offered compensation under such, or subsequent similar tariff rule		
3. Passengers who did not receive compensation in accordance with provisions for exceptions contained in Rule , or Rules (3) of Agent C. C. Squire's CAB No. or subsequent similar tariff rule:		XXXXXXXXXXXXX
a) government requisition of space		
b) arrangement for alternate means of transportation for passenger which, at the time such arrangement was made, was planned to arrive at the passenger's next point of stop-over not later than one hour after the time of the flight, for which confirmed reserved space was held, was planned to arrive		
c) passenger accommodation on the flight for which he held confirmed reserved space, but was seated in a section of the aircraft other than that specified on his ticket	Upgrade	
	Downgrade	
	Total 1/	
4. Number of passengers enplaned		

1/ Total would include all passengers denied confirmed space during the reporting period--include appropriate notes in the event that the sum of the specific items listed does not agree with the total.

NOTE: Any abnormal condition, such as strikes which have a bearing upon the results during the reporting period should be noted.

DEFENDANT'S EXHIBIT E – CAB REGULATION ER-503

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Enactment of Part 250
Effective: October 17, 1967
Adopted: August 3, 1967

PART 250 - PRIORITY RULES, DENIED BOARDING COMPENSATION TARIFFS AND REPORTS OF UNACCOMMODATED PASSENGERS

In a Notice of Proposed Rule Making published in the Federal Register on January 17, 1967 (32 F.R. 459) and circulated as EDR-109, Docket 16563, the Board proposed to amend Part 221 and to issue a new Part 250 of the Economic Regulations. The new part would require carriers to establish and file with the Board priority rules for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight. In addition, the amendment to Part 221 and the new Part 250 would require carriers to file tariffs providing specified denied boarding compensation to such passengers. Finally, the new part would require carriers to file reports of unaccommodated passengers.

Interested persons were offered an opportunity by the Notice to participate in the making of this rule through submission of written data, views or arguments. Consolidated comments on behalf of 28 air carriers have been submitted by the Air Transport Association of America (ATA). In addition, supplementary comments have been filed by certain air carriers, 1/

1/ Eastern Air Lines, Lake Central Airlines, Mohawk Airlines, Northwest Airlines, Pan American World Airways, Trans Caribbean Airways, Trans-Texas Airways, Trans World Airlines and United Air Lines.

Exhibit E

and a number of comments have been received from members of the traveling public. Due consideration has been given to all relevant matter presented.

The Board has decided to adopt the rule with the modifications set forth below. Except as modified herein, the tentative findings set forth in the Explanatory Statement to the proposed rule (EDR-109, supra) are incorporated herein by reference and made final.

In considering the comments filed by ATA and supplementary comments filed by various air carriers, we are met at the outset with the contention that certain aspects of the proposed rule are beyond the scope of the Board's statutory authority. Specifically, the carriers claim that the Board's power to regulate denied boarding compensation derives solely from section 1002 of the Act. It is asserted that under sections 1002(d) and (f) the Board can prescribe a rule, regulation or practice affecting a rate, fare or charge for interstate, overseas, or foreign air transportation, or the value of service thereunder, only if the Board, after notice and hearing, finds the present rule, regulation or practice unlawful. Since no hearing has been held, it is argued that we cannot prescribe denied boarding compensation.

We do not agree. The fact that denied boarding compensation is the subject of tariff filings does not compel us to act only pursuant to the tariff and rate-fixing procedures of the Act. While tariff procedures undoubtedly are available and represent a convenient and logical method for setting forth the practices which the carriers follow with respect to reservations and denied boarding compensation, we would be empowered, in our judgment, to impose the requirements here involved by regulation which did not

require the filing of tariffs. Furthermore, while the rate-fixing procedures of the Act also are available and appropriate for dealing with specific problems peculiar to individual carriers in relation to such practices, the problems with which we are here confronted go beyond the mere regulation of rates and practices affecting the value of services. We are here concerned with the broad problem of air carrier reservation procedures, including circumstances in which the carriers are utilizing a system of confirmed reservations notwithstanding their inability to assure that such reservations will in fact be honored. The problem thus cuts across a number of areas of Board jurisdiction and carrier responsibility, and the provisions and purposes of Section 411 of the Act are involved to a far greater extent than are the rate-fixing ones. Section 411 precludes "unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof." This provision, the anti-discrimination provision, and the over-all public interest provisions and purposes of the Act militate against a reservation system which leads members of the traveling public to believe that they have firm reservations when in fact they do not, without there being some adequate compensation features available to those persons whose reservations are not honored. The Board is not required to sit idly by and permit such a result. Neither does it believe that it is required to proceed by cumbersome evidentiary hearings to take the action here involved, particularly since the issues and action involved are largely ones of policy and judgment in future applications whose resolution does not turn upon findings of fact concerning

disputed evidentiary matters. Nor is this result legally required because tariffs are involved. See American Airlines v. Civil Aeronautics Board, 359 F. 2d 624 (C.A.D.C., 1966), cert. denied, 385 U.S. 843.

Congress has given the Board not only a wide regulatory authority with respect to carrier practices, but the specific function of promoting adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices. And, in addition, Congress has given the Board the power to classify carriers and service and the power to issue implementing rules and regulations. 2/ See American Airlines v. Civil Aeronautics Board, supra. On the other hand, the carriers have the duty, under section 404(a), to enforce just and reasonable classifications, rules, regulations and practices relating to interstate and overseas air transportation, and section 404(b) proscribes unjust discrimination.

In our opinion the action proposed is clearly within our rule making powers under sections 204(a) and 416(a). We are here basically concerned

2/ Section 204(a) provides: "The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under this Act."

Section 416(a) provides: "The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Board finds necessary in the public interest."

with the policy the Board should adopt with respect to the reservations practices of route carriers which operate flights to and from the contiguous States. Thus, unlike adjudication, we are not evaluating a respondent's past conduct or determining past and present rights and liabilities, and the issues do not relate to evidentiary facts, but to policy-making conclusions to be drawn from the facts.

The facts to which our policy is directed have been set out in EDR-109. There, we noted the dimensions of the oversales problem and the reservations practices of the carriers which contribute to it. It was concluded that the present reservations system of the carriers is designed to provide maximum benefits to the traveling public and to reduce the carriers' reservations costs. However, it was concluded that these ends are achieved at a price of substantial inconvenience and hardship to those relatively few passengers who are oversold and denied boarding although holding confirmed reservations. Under these circumstances two policy avenues were open to the Board. It could reduce oversales by closely regulating the details of the reservations systems of the carriers with the inevitable result of curtailing the present flexibility by which passengers make, change and cancel reservations. No carrier suggests that this course should be taken by the Board, and several comments state that the present proposal is preferable to our earlier proposal which would have placed severe restrictions on existing reservations practices. 3/

3/ EDR-95, October 12, 1965.

The second policy course is that which has been followed: to take positive steps to assure prompt, effective and adequate compensation to passengers who are denied boarding and to refrain from detailed regulation of the carriers' reservations practices. Clearly, commensurate with our responsibilities, a third policy avenue was not open: to do nothing. Certainly we cannot properly tolerate a system which represents to the public a commitment that a passenger has a firm reservation when that commitment is not honored upwards of 50,000 times a year and the passengers holding these unhonored reservations are offered little or no compensation.

We further emphasize that the facts upon which our policy is based are not contested nor are there any issues involved which are of a type which could be resolved in an evidentiary hearing. And in this connection we point out that neither ATA nor any carrier has stated what kinds of facts they propose to adduce at an oral hearing, and by what witnesses, nor is there any proffer as to particular lines of cross-examination which required explanation at an oral hearing. 4/

Moreover, there has been no refutation of the Board's findings in EDR-109 that the compensation provided in carriers' present tariffs for failure to accommodate passengers with confirmed reserved space "falls far short of beirg adequate" 5/ and that it is not completely equitable in view

4/ See American Airlines, Inc. v. Civil Aeronautics Board, supra, 359 F. 2d at 633.
5/ Eastern specifically agrees with this finding.

of its being primarily limited to domestic transportation. Thus, ATA does not claim that the existing tariff is adequate. Instead, it claims that the objective of "prompt, effective and adequate compensation to oversold passengers" is accomplished "under existing rules and practices." (Underscoring added.) The "practices" referred to, 6/ however, vary from carrier to carrier, are conducted on an ad hoc basis depending upon the situation, and are not obligatory. We cannot accept the voluntary provision of amenities by air carriers to some oversold passengers as a substitute for requiring air carriers to offer prompt, effective and adequate monetary compensation to all oversold passengers. 7/

In their separate comments, the only carriers which appear to defend the present level of the denied boarding compensation tariff are TWA and United. TWA believes that, although the statistics show that those accepting denied boarding compensation received only an average of $20.00, "it can be argued equally well from these statistics that the vast majority of oversale passengers deemed the existing compensation to be adequate" and United states that from all the evidence the Board has before it, "it could equally as well conclude that the oversold passenger has been compensated too handsomely."

6/ ATA states that "the carriers generally absorb the costs of such amenities as overnight hotel accommodation in those rare instances where the oversold passenger cannot be boarded until the next day, local and long distance phone calls or telegrams to advise of changed arrival time, meals, ground transportation, and even the chartering of air taxi planes to facilitate movement of the passenger." ATA adds: "For representative carriers the annual costs of such amenities approximate the amounts paid out as denied boarding compensation."
7/ On the other hand, the requirement that carriers provide denied boarding compensation to oversold passengers is not intended to preclude carriers from according these amenities to passengers.

We cannot agree. An average payment of $20.00 for a carrier's failure to provide a passenger with confirmed reserved space is, on its face, a mere token which cannot reasonably be considered adequate to compensate a passenger for the inconvenience, distress, and, in many cases, hardship and monetary loss resulting from an oversale. And clearly no inference can be drawn from the fact that passengers in the main accept what is offered to them rather than engage in costly litigation with the carrier.

For the reasons set forth, we conclude that it is within the Board's rule making powers to require carriers to file denied boarding compensation tariffs at a level prescribed by the Board, as well as to require the filing of priority rules and reports of unaccommodated passengers. We further conclude that the rule as proposed, except for the modifications hereinafter set forth, is necessary to give effect to the Board's policy that air carriers conducting flights to and from the contiguous States shall be required to offer prompt, effective and adequate compensation to oversold passengers.

We have, however, given careful consideration to the views of the carriers and the public as submitted in their comments on EDR-109 concerning implementation of our policy. Set forth below is our disposition of the significant matters raised.

We deal first with the suggestion of Northwest, Pan American and TWA that the rule should not apply to international routes.[8/] These carriers argue that, since foreign air carriers do not offer denied boarding compensation, U.S. flag carriers would be at a competitive disadvantage if they were required to do so. And TWA states that, if the Board wishes to consider denied boarding compensation in international air transportation at all, then it should consider such only with a view to equal treatment of United States and foreign flag carriers.[9/]

In our view, the above comments do not justify excepting foreign air transportation by U.S. air carriers from application of the requirement to provide adequate compensation to oversold passengers. Far from being a competitive disadvantage, it would appear to us that if U.S. flag carriers do provide denied boarding compensation and their foreign competitors do not, the competitive disadvantage lies with the latter. Furthermore, once U.S. flag carriers are known to provide denied boarding compensation and foreign

8/ Trans Caribbean requests that the New York-San Juan market also be excluded from the provisions of the rule until such time as "more realistic" provisions can be worked out to cure the related problems in the market. In support, it relies on extreme peaking problems and a high level of no-shows and multiple bookings during peak times. Far from furnishing a reason for excluding the New York-San Juan market, the matters cited by Trans Caribbean illustrate that this is a market where the oversales problem is particularly acute and the rule needed. Furthermore, no-shows and multiple bookings are within the capacity of the carrier to control.

9/ TWA also contends that the rule would require modification of various IATA resolutions, particularly Resolution 278, and that the Board should take this factor into account. We are not convinced that modification of any IATA resolution would be required. But if such were the case, it would pose no obstacle to promulgation of the rule.

air carriers do not, competitive pressures may well force the latter to provide equal or substantially equal treatment to oversold passengers. Finally, the per carrier expense of denied boarding payments has not been shown, or even alleged, to be of such magnitude as to affect the relative operating costs of U.S. flag carriers vis-à-vis their foreign competitors.

In this latter connection we point out that the cost of denied boarding compensation to the carriers as a whole will be of relatively minor proportion. In 1966, according to ATA, the domestic trunk and local service airlines boarded some 95 million passengers, and the estimated 50,000 oversold passengers represented only 5/100ths of one percent of the passengers boarded. It is clear that we are dealing with a minimal cost item relative to total revenues.

Turning to other aspects of the rule, it was proposed that the required tariffs provide for compensation to be paid a passenger holding confirmed reserved space at the rate of 200 percent of the value of the first remaining flight coupon with a $50.00 minimum and a $200.00 maximum. ATA and carriers commenting on the level of compensation are unanimously of the belief that it is excessive. ATA states, however, that it may well be that a case can be made for a rate in the range of 100 percent of the fare with no maximum for flights within the Continental United States, and maintains that the proposed $50.00 minimum would be particularly harsh on local service carriers. Eastern opposes the $50.00 minimum, and asserts that 100 percent of the value of the first remaining flight coupon with a

$25.00 minimum and a $200.00 maximum, plus full amenities where warranted, is a more realistic level.[10] Northwest argues that if such a requirement is imposed on foreign air transportation, the maximum should not be more than $100.00, and TWA believes that an international oversale "penalty" should not in any event exceed 50 percent of the first remaining flight coupon and that a maximum limit of $150.00 would be more than equitable.[11]

The level of compensation to be provided oversold passengers must be determined on the basis of reasonable and responsible judgment in the light of comment offered on the proposal and the attendant facts of record. On balance we are persuaded that the appropriate level of compensation would be 100 percent of the first remaining flight coupon with a maximum of $200 and a minimum of $25.00.

Compensation at the rate of 100 percent of the value of the first remaining flight coupon, as suggested by ATA and certain carriers, is equal to the amount invested by the passenger and represents the value of the transportation which the carrier failed to provide under its commitment to the passenger. Therefore, we believe that this level would in a general way make the passenger "whole" for the damage suffered by him, would be high enough, in our view, to provide adequate compensation to passengers accepting it and still not be so high as to invite abuses by some passengers.

10/ Mohawk also supports compensation at the rate of 100 percent of the first remaining flight coupon with a $25.00 minimum.

11/ TWA advocates a domestic "penalty" of 100 percent of the first remaining coupon and a $150.00 maximum.

While Eastern agrees that a $200.00 maximum would be appropriate, Northwest and TWA oppose this maximum for international travel.[12] The latter argues that the maximum, as well as the percentage rate, for international travel should be below domestic standards, as the inconvenience tends to be less for international travelers.

We agree that delays for international travelers are of generally less significance than for domestic travelers. Because of the length of transit, time differentials, customs clearance requirements, and extended stays abroad which are usual in international travel, these travelers ordinarily do not budget their time so tightly as in the case of domestic travelers, and a delay of a few hours occasioned by denied boarding would not cause undue hardship. We shall recognize these differences in international travel by revising the proposed rule to provide that, in foreign air transportation a passenger shall not be eligible for compensation if the carrier arranges for alternate means of transportation, which, at the time such arrangement is made, is planned to arrive at the passenger's next point of stopover earlier than, or not later than four hours after, the time the flight, for which confirmed reserved space is held, is planned to arrive. In view of this revision, there is no justification for

12/ In addition, Pan American believes that the temptation to fraud inherent in a proposal that would pay $200.00 to a passenger with a ticket showing a confirmed reservation for which no record could be located would be greater in foreign air transportation because of the greater value in many countries of $200.00 in United States currency.

compensating eligible denied boarding passengers in foreign air transportation at a lower level than domestic passengers.

With respect to the proposed $50.00 minimum, it is contended that it would be particularly harsh on local service carriers and on trunklines with respect to short-hauls, since it could result in payments up to 500 percent of the fare in principal local service markets and over 300 percent in certain short-haul trunk markets.

In light of these comments we have decided to revise the minimum to $25.00. Under this minimum, payments of more than 200 percent of the flight coupon will result only where its value is less than $12.50. At the same time a $25.00 minimum gives recognition to the fact that compensation directly geared to the value of a flight coupon in this limited category would not be adequate.

As indicated above, in international travel the "one-hour rule" respecting arrangement of alternate means of transportation to passengers will be revised to four hours. In addition, the final rule will provide that, with respect to interstate and overseas air transportation, a passenger shall not be eligible for compensation if the carrier arranges for alternate means of transportation, which, at the time such arrangement is made, is planned to arrive at the passenger's next point of stopover, earlier or not later than two hours after, the time the flight, for which confirmed reserved space is held, is planned to arrive.

In our opinion the proposed one-hour rule would be too restrictive. As a practical matter there would be relatively few opportunities for carriers to provide alternate transportation under these conditions. A two-hour

provision will give the carriers flexibility in arranging alternate transportation for the passengers' benefit and a two-hour delay at a stopover point should not, in general, cause undue inconvenience to passengers. Furthermore, ATA points out that where a passenger must make a connection with another flight requiring for example a two-hour stopover, if the carrier arranges alternate transportation which would permit him to make the connection he would not be inconvenienced. Nevertheless, despite the lack of inconvenience to the passenger, he would be eligible for compensation under a one-hour rule if the alternate flight reached the stopover point more than one hour after the planned arrival of the flight on which he had been originally booked. For the above reasons, the proposed rule will be revised in the manner indicated.

The proposed rule did not provide an exception for eligibility for denied boarding compensation where the flight on which the passenger holds confirmed reserved space is unable to accommodate him because of (1) extraordinary fuel requirements, (2) reduction in allowable takeoff or landing weight for reasons beyond the carrier's control, or (3) substitution of equipment of lesser capacity when required by operational and/or safety reasons. These exceptions are contained in the carriers' present denied

boarding compensation tariff, and ATA, TWA, Trans Caribbean and Trans-Texas contend that the rule should include them.[13/] ATA believes that to require the payment of denied boarding compensation under the three situations described above would be a retrograde step not in the public interest. ATA states that the practicalities of air transportation sometimes make the aircraft scheduled for a particular flight unavailable for such reasons as mechanical problems or because it is grounded by weather at some other airport. When this occurs, and the only available airplane is one of smaller capacity, ATA contends that it is in the public interest to substitute the smaller airplane, and carry as many passengers as it will accommodate rather than to cancel the flight, and the same considerations apply where it is necessary to block seats because of weather or fuel requirements.

We have determined to revise the rule only to provide an exception for the case of substitution of equipment of lesser capacity when required by operational and/or safety reasons.

While the carriers cannot predict that circumstances on a particular flight will require the blocking of seats because of weather or fuel requirements, they can predict that such conditions will arise from time to time, particularly at certain stations. By accepting reservations up to 100 percent of the seats on the aircraft, the carriers in effect gamble that these circumstances will not occur on a particular flight. This policy, which is under the control of the carriers, inevitably produces oversales. Such oversales, moreover, could be substantially eliminated by accepting

13/ Eastern, however, endorses the deletion of these exceptions.

reservations for something less than the total number of seats. While the present policy may well be the most economic, we see no reason why it should in effect be subsidized by the oversold passenger. We shall not, therefore, adopt the first two exceptions suggested above.

The exception with respect to substitution of equipment does, however, have merit. While the blocking of space to reduce takeoff weight to an allowable level would normally affect comparatively few passengers on any given flight, the substitution of equipment of lesser capacity because of mechanical failure, for example, may require a large number of passengers to be denied boarding with a consequent substantial loss to the carrier were it required to pay denied boarding compensation. Further, unlike the case of payload restrictions, denied boardings arising from aircraft substitutions are more truly beyond the carriers' control, since they could not reasonably be expected to withhold from advance sale the very large number of seats that would be required to reasonably insure against the possibility of oversales. Also, in the case of equipment substitutions, economic pressures might well force the carrier to cancel the flight altogether rather than pay compensation to passengers denied boarding because of the substitution. Accordingly, we believe that it would be in the general interest of the traveling public to permit this exception to eligibility for denied boarding compensation. We shall be prepared, however, to eliminate this exception should we find that abuses have occurred.

Section 250.7 of the proposed rule[13a/] would require every carrier to tender a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, a draft for the appropriate amount of compensation, with the reverse side of the draft including a release from liability when the draft is endorsed by the passenger, provided that the draft is endorsed and paid within 30 days of the date on which the denied boarding occurs. ATA objects to the requirement of release from liability if the draft is endorsed and paid within 30 days. It states that most carriers regard the existing tariff which "contemplates"[14/] the transaction being completed at the time of denied boarding as a cleaner and more expeditious way to handle oversale incidents. TWA and Trans Caribbean also oppose the 30-day period, while Eastern believes it reasonable. And Mohawk does not oppose it, but states that it will petition for relief if at some later date it finds such time lag to be burdensome.

In our opinion, it would be manifestly unfair to require passengers to make a decision, immediately after being denied boarding, as to whether to accept compensation as liquidated damages for all damages incurred by the passenger as a result of the carrier's failure to provide the passenger with confirmed reserved space. Passengers who are denied boarding should instead be given the opportunity of making the election after the consequences of denied boarding have occurred and are known to them. We believe

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13a/ Sections 250.7, 250.8 and 250.9 of the proposed rule referred to herein are recodified in the final rule as 250.8, 250.9 and 250.10, respectively.

14/ There is no time limit specified in the existing tariff.

the 30-day limit will insure this result without undue delay in settling the incident.

In addition to the comments noted above, ATA states, with respect to the requirement that tender of the draft be made at the time and place the denied boarding occurs, that in some situations it has been found that it better suits the passenger's convenience if this is done at the point of destination.[15/] (For example, even the few minutes required to complete the compensation transaction might cause the passenger to miss, or to risk missing, an alternative flight.) According to ATA, some carriers feel a minor rewording of the present rule may be in order to cover such situations.

We agree with ATA that where a carrier arranges alternate means of transportation for an oversold passenger it may be impossible to prepare and tender the draft prior to departure time. Accordingly, the rule will be changed by adding a proviso that where a carrier arranges, for the passenger's convenience, alternate means of transportation which departs before the draft can be prepared and tendered the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

In addition, Trans Caribbean states that the rule raises substantial questions of administration, since it is not always possible for ticket

15/ It is noted, however, that the point of destination could well be a station not served by the carrier required to make the tender.

counter personnel to tell whether a passenger holding an apparently valid ticket but whose name is not on the reservation list actually holds a valid confirmed reservation. According to the carrier, the most common example of this problem is the returning passenger who has not reconfirmed his reservation.

We find that Trans Caribbean's contention is without substantial merit. Section 250.4 of the rule specifies that denied boarding compensation tariffs apply "to a passenger holding confirmed reserved space who presents himself for carriage at the appropriate time and place, having complied fully with the carrier's requirements as to ticketing, check-in and reconfirmation procedures and being acceptable for transportation under the carrier's tariff * * *." We note that Trans Caribbean is the only carrier mentioning the problem referred to, and we are not persuaded that it is not within the control of the carrier.

Section 250.8 of the proposed rule provides that every carrier shall furnish passengers who are denied boarding, immediately after the denied boarding occurs, a written statement explaining the terms, conditions and limitations of the denied boarding compensation. Such a statement was to have included certain specified language. AIA, Eastern and TWA contend that the specified language is lengthy and somewhat confusing.

We have decided to accord to the carriers the option of using a statement containing the prescribed language or of using a statement of their own making, provided that it includes the substance of the prescribed

language and it is submitted to and approved by the Board prior to its use. Concurrently with the issuance of the instant rule, we are issuing a final rule amending Part 385 by delegating to the Director, Bureau of Operating Rights, the authority to approve or disapprove the statement.

Finally, section 250.9 of the proposed rule would require carriers to file with the Board reports of unaccommodated passengers. ATA and TWA, while otherwise not objecting to the proposal, take the position that reports by U.S. flag carriers in competitive markets with foreign flag carriers should be withheld from public disclosure. We agree, and the final rule will provide that reports filed covering international services shall be withheld from public disclosure. Disclosure of such information would adversely affect the interest of these carriers, since it would enable foreign air carriers to have access to it for competitive reasons, and disclosure is not required in the interest of the public.

Accordingly, the Civil Aeronautics Board hereby amends the Economic Regulations, effective October 17, 1967, by adding a new Part 250 to read as follows:

PART 250 - PRIORITY RULES, DENIED BOARDING COMPENSATION TARIFFS AND REPORTS OF UNACCOMMODATED PASSENGERS

Sec.

250.1 Definitions.
250.2 Applicability.
250.3 Priority rules.
250.4 Filing of denied boarding compensation tariffs.
250.5 Amount of denied boarding compensation.
250.6 Exceptions to eligibility for denied boarding compensation.
250.7 Denied boarding compensation as liquidated damages.
250.8 Denied boarding compensation drafts.
250.9 Written explanation of denied boarding compensation.
250.10 Reports of unaccommodated passengers.
Appendix A
Appendix B

§250.1 Definitions.

For the purpose of this part:

"Carrier" means an air carrier, except a helicopter operator or an air carrier conducting intra-Alaska service exclusively, holding a certificate issued by the Board pursuant to section 401(d)(1) and (2) of the Act, authorizing the transportation of persons.

"Confirmed reserved space" means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket, as being reserved for the accommodation of the passenger.

"Stopover" means a deliberate interruption of a journey by the passenger, agreed to in advance by the carrier, at a point between the place of departure and the place of destination.

"Value of the first remaining flight coupon" means the applicable one-way fare, including any surcharge, less any applicable discount.

§250.2 Applicability.

This part applies to all carriers as defined in §250.1 and applies to flights or portions of flights originating or terminating in the United States, its territories or possessions, but excludes flights originating and terminating within the State of Alaska.

§250.3 Priority rules.

Every carrier shall establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight. Every carrier shall file with the Board

two copies of such rules and criteria, including that portion of its company manual instructing employees on the order of boarding priorities in case of an oversold flight. Such rules and criteria shall not make, give or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust discrimination of any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§250.4 Filing of denied boarding compensation tariffs.

Subject to the exceptions provided in §250.6, every carrier shall file tariffs providing compensation to a passenger holding confirmed reserved space who presents himself for carriage at the appropriate time and place, having complied fully with the carrier's requirements as to ticketing, check-in and reconfirmation procedures and being acceptable for transportation under the carrier's tariff, and the flight for which the passenger holds confirmed reserved space is unable to accommodate the passenger and departs without him.

Note: See §221.38(a)(7).

§250.5 Amount of denied boarding compensation.

Subject to the exceptions provided in §250.6, the tariffs required by this part shall provide for compensation to be paid a passenger holding confirmed reserved space, as described in §250.4, at the rate of 100 percent of the value of the first remaining flight coupon with a $25.00 minimum and a $200.00 maximum.

§250.6 Exceptions to eligibility for denied boarding compensation.

A passenger shall not be eligible for denied boarding compensation if:

(a) The flight for which the passenger holds confirmed reserved space is unable to accommodate him because of: (1) Government requisition of space; or (2) substitution of equipment of lesser capacity when required by operational and/or safety reasons; or

(b) The carrier arranges for alternate means of transportation, which, at the time such arrangement is made, is planned to arrive at the passenger's next point of stopover earlier than, or not later than two hours after, the time the flight, for which confirmed reserved space is held, is planned to arrive in the case of interstate and overseas air transportation, or four hours after such time in the case of foreign air transportation; or

(c) The passenger is accommodated on the flight for which he holds confirmed reserved space, but is offered accommodations or is seated in a section of the aircraft other than that specified in his ticket at no extra charge: Provided, That a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund.

§250.7 Denied boarding compensation as liquidated damages.

The tariffs required by this part shall specify that the carrier will tender, on the day and place the denied boarding occurs, compensation in the amount specified above, which, if accepted by the passenger, shall constitute liquidated damages for all damages incurred by the passenger as a result of the carrier's failure to provide the passenger with confirmed reserved space.

§250.8 Denied boarding compensation drafts.

Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, a draft for the appropriate amount of compensation provided in §250.5, and the reverse side of such draft shall include a release stating that when the draft is endorsed by the passenger, the passenger thereby relieves the carrier from liability for all claims for damages which might accrue to the passenger as a result of the carrier's failure to provide the passenger with space on the flight in question, provided that the draft is endorsed and paid within 30 days of the date on which the denied boarding occurs: Provided, however, That where a carrier arranges, for the passenger's convenience, alternate means of transportation which departs before the draft can be prepared and tendered the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

§250.9 Written explanation of denied boarding compensation.

Every carrier shall furnish passengers who are denied boarding on flights on which they hold confirmed reserved space, immediately after the denied boarding occurs, a written statement explaining the terms, conditions and limitations of the denied boarding compensation provided by this part. Each carrier shall, prior to the effective date of this rule, file three copies of the statement with the Bureau of Operating Rights, and the statement shall include the language hereinafter set forth: Provided, however, That where a carrier desires to use a statement of its own making which contains the substance of the following language, it may do so after it has submitted the statement to the Board and the Board has approved it.

"Tariffs filed by this carrier with the Civil Aeronautics Board provide denied boarding compensation to a passenger holding confirmed reserved space where the flight for which the passenger holds such space is unable to accommodate him and departs without him.

"Passengers eligible for denied boarding compensation shall be compensated at the rate of 100 percent of the value of the first remaining flight coupon on their tickets with a $200.00 maximum and a $25.00 minimum. The carrier is required to tender to each such passenger, on the day and place the denied boarding occurs, a draft in the amount specified above which, if endorsed and paid within 30 days, shall relieve the carrier from liability for all claims for damages which might accrue to the passenger as a result of the carrier's failure to provide the passenger with space on the flight in question. Where, however, the carrier arranges, for the passenger's convenience, alternate means of transportation which departs before the draft can be prepared and tendered the passenger, tender will be made by mail or other means, within 24 hours after the time the denied boarding occurs.

"In order to qualify for such compensation, a passenger must have complied fully with the carrier's requirements as to ticketing, check-in and reconfirmation procedures and be acceptable for transportation under the carrier's tariff. However, a passenger is not eligible for compensation if (a) the flight for which the passenger holds confirmed reserved

space is unable to accommodate him because of Government requisition of space or substitution of equipment of lesser capacity for operational and/or safety reasons; (b) the carrier arranges for alternate means of transportation, which, at the time such arrangement is made, is planned to arrive at the passenger's next point of stopover earlier than, or not later than two hours after, the time the flight, for which confirmed reserved space is held, is planned to arrive in the case of interstate and overseas transportation, or four hours after such time in the case of foreign air transportation; or (c) the passenger is accommodated on the flight for which he holds confirmed reserved space, but is offered accommodations or is seated in a section of the aircraft other than that specified in his ticket at no extra charge: Provided, That a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund."

§250.10 Reports of unaccommodated passengers.

Carriers shall file reports with the Bureau of Accounts and Statistics, in the form attached hereto as Appendix A (CAB Form 250), with respect to the applicable markets specified hereinafter, of the total number of revenue passengers boarded and the number of unaccommodated passengers in three categories: denied boarding on aircraft, downgrades and upgrades. The markets for which such reports shall be filed are those for which on-time reporting is filed in accordance with Part 234 of the Board's Economic Regulations and, in addition, New York-San Juan. Local service carriers shall, in

addition to reports which may be required by Part 234, file such data for the five top-ranking markets of each. The reports shall cover the third month in each calendar quarter and shall be filed within 45 days after the month covered by the report. In addition, carriers shall file, on a monthly basis, the information requested in Appendix B (CAB Form 251). These reports may be on a system basis or limited to those stations accounting for 67 percent of the carrier's total enplanements, or the top 15 stations, whichever number is greater. The information in Item 4 shall be limited to the passengers enplaned at the reported stations and not the system total. Further, a list of the stations included should be appended to each report. These reports are to be submitted within 30 days after the month covered by the report. Those carriers with both domestic and international operations shall file separate reports for each. Reports covering international operations shall be withheld from public disclosure.

(Secs. 204(a) and 416(a) of the Federal Aviation Act of 1958 (72 Stat. 743 and 771; 49 U.S.C. 1324 and 1386). Interpret or apply secs. 102, 403, 404 and 411 of the Federal Aviation Act of 1958 (72 Stat. 740, 758, 760 and 769; 49 U.S.C. 1302, 1373, 1374 and 1381) and secs. 3 and 4 of the Administrative Procedure Act (81 Stat. 54, 80 Stat. 383; 5 U.S.C. 552 and 553).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

CAB Form 250
(8-67)

Budget Bureau No. 39-R0090

UNACCOMMODATED PASSENGER REPORT

Carrier _____

_____, 19__

City Pairs (By Direction)	Denied Boardings 1/ Qualified for Compensation	Denied Boardings 1/ Exceptions per Tariff Rule 2/	Downgrades	Upgrades	Total Enplaned Passengers

Note: Carriers will report only nonstop flights on this form.

1/ Number of passengers denied space on flights for which they held a valid ticket.
2/ (a) Government requisition of space; (b) substitution of equipment; (c) arrangement for alternate means of transportation for passenger which, at the time such arrangement was made, was planned to arrive at the passenger's next point of stopover not later than two hours after the time of the flight, for which confirmed reserved space was held, was planned to arrive in the case of interstate and overseas air transportation, or four hours after such time in the case of foreign air transportation; and (d) passenger accommodation on the flight for which he held confirmed reserved space, but was seated in a section of the aircraft other than that specified by the ticket.

Budget Bureau No. 39-R0090

CAB Form 251
(8-67)

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.
REPORT OF PASSENGERS DENIED CONFIRMED SPACE
TO BE FILED WITHIN 30 DAYS AFTER TERMINATION OF EACH MONTH

Carrier _____ Month of _____, 19__

	No. of Passengers
1. Passengers who received compensation in accordance with Rule , or Rule of Airline Tariff Publishers, Inc., Agent, CAB No. or subsequent similar tariff rule	
2. Passengers who qualified for compensation in accordance with Rule , or Rule (3) of Airline Tariff Publishers, Inc., Agent, CAB No. but did not accept or were not offered compensation under such, or subsequent similar tariff rule	
3. Passengers who did not receive compensation in accordance with provisions for exceptions contained in Rule , or Rules (3) of Airline Tariff Publishers, Inc., Agent, CAB No. or subsequent similar tariff rule:	XXXXXXXX
(a) Government requisition of space	
(b) substitution of equipment	
(c) arrangement for alternate means of transportation for passenger which, at the time such arrangement was made, was planned to arrive at the passenger's next point of stopover not later than two hours after the time of the flight, for which confirmed reserved space was held, was planned to arrive in the case of interstate and overseas air transportation, or four hours after such time in the case of foreign air transportation	
(d) passenger accommodation on the flight for which he held confirmed reserved space, but was seated in a section of the aircraft other than that specified on his ticket: Upgrade	
Downgrade	
Total 1/	
4. Number of passengers enplaned	

1/ Total would include all passengers denied confirmed space during the reporting period. Include appropriate notes in the event that the sum of the specific items listed does not agree with the total.
Note: Any abnormal condition, such as strikes which have a bearing upon the results during the reporting period, should be noted.